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SEVENTH DAY.

February 17, 1919.

Sir EDWARD CARSON: May it please your Lordship, Gentlemen of the Jury, on Friday, when we adjourned, I had attempted to deal with the case of the two prosecutions of Mr. Tilak, and I had gone through, without reading most of them, the main documents that refer to that matter, and I had asked you to say upon those facts which are not in controversy in this case, and cannot be in controversy, to say that Sir Valentine Chirol was justified in drawing the conclusions which he did as a matter of comment in this book which is now impeached here. Gentlemen, apart altogether from the mere circumstances of those prosecutions and the matters leading up to them and the confessions of the two murderers on each of those occasions, which of course, are of vast importance in this case, there is another matter which you have to consider in judging Sir Valentine Chirol's book, and it is this: What were the circumstances existing in India at the time under which these productions of Mr. Tilak's were published, in other words, what were the elements that he had at his disposal when he was putting forward what I suggest to you are the most wicked doctrines of anarchy.

Gentlemen, at that time, and for some years previous to that, Mr. Tilak had been organising in India a widespread conspiracy for the overthrow of the British Government as it then existed. He had been organising it in various ways, with which I will deal very briefly. He had a fertile soil, which had been prepared by himself, and his own methods, and, of course, you will see at once the importance of this—that it is one thing to send out articles about bombs and articles defending murder and articles abusing officers and magistrates and everybody connected with the administration of the law in a perfectly peaceful contented place, but to send them out when you have prepared a vast conspiracy for the overthrow of British Government in the particular place is another. It has been often said that it is one thing to throw a match into a field and another thing to throw it into a powder magazine. That is what he was doing

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and it is right to point out and it is necessary to bear in mind in the course of this case that all that is dealt with as well in Sir Valentine Chirol's book. He gives the ground on which he drew these inferences as regards Mr. Tilak. It is not something we are putting forward in this case now for the first time; all this is gone into and dealt with in Sir Valentine Chirol's book; the conspiracy of the Swarajya which meant independence, the methods in which that was carried out by the Swadeshi preaching, of which I will say a few words in a moment, at these festivals of Ganpati and Shivaji. Those were his methods and it is right that I should read what is not challenged here in this case but what is part of what has to be considered. You cannot take out of a book a sentence here or a sentence there and then say that is the whole matter. You have to read it all as one matter. I will deal with something Sir John Simon has put forward in this case about what he is pleased to call separate libels when I come to deal with that matter, but here now upon this point you have to take the whole matter put forward, and see the inferences which Sir Valentine Chirol drew and which he asks you to draw upon the materials before you. Now I take first, my Lord, at page 30 of "Indian Unrest" this passage at the bottom of the page. I am trying to select portions to bring to your mind what I mean: "Hand in hand with this campaign for the glorification of Hinduism at the expense of Western civilization there has been carried on another and far more invidious campaign for the vilification of everything British. The individual Englishman is denounced as a bloodsucker and a tyrant; his personal integrity is impugned and derided; his methods of administration are alleged to be wilfully directed to the impoverishment, and even to the depopulation, of India; his social customs are traduced as depraved and corrupt; even his womenfolk are accused of common wantonness. This systematized form of personal calumny is a scarcely less significant feature of the literature of Indian unrest than its appeals to the Hindu Scriptures and to the Hindu deities and its exploitation of the religious sentiment for the promotion of racial hatred. Swadeshi and Swarajya are the battlecries

of this new Hindu 'nationalism,' but they mean far more than a mere claim to fiscal or even political independence. They mean an organised uplifting of the old Hindu traditions, social and religious, intellectual and moral, against the imported ideals of an alien race and an alien civilisation, and the sincerity of some, at least, of the apostles of this new creed cannot be questioned. With Mr. Arabindo Ghose, they firmly believe that 'the whole moral strength of the country is with us, justice is with us, nature is with us, and the law of God, which is higher than any human law, justifies our action.'" Of course, Gentlemen, you understand you are not concerned in this case as to whether those who preach those doctrines are sincere or whether they are not. That is not the question. The question is whether that was their object, to overthrow in this method everything that was British. If you will turn to page 44, you will see this passage: "Tilak's propaganda had at the same time steadily assumed a more and more anti-British character, and it was always as the allies and the tools of Government, in its machinations against Hinduism, that the Hindu reformers and the Mohammedans had in turn been denounced. In order to invest it with a more definitely religious sanction, Tilak placed it under the special patronage of the most popular deity in India. Though Ganesh, the elephant-headed god, is the god of learning whom Hindu writers delight to invoke on the title page of their books, there is scarcely a village or a frequented roadside in India that does not show some rude presentment of his familiar features, usually smeared over with red ochre. Tilak could not have devised a more popular move than when he set himself to organise annual festivals in honour of Ganesh, known as Ganpati celebrations, and to found in all the chief centres of the Deccan Ganpati Societies, each with its mela or choir recruited among his youthful bands of gymnasts. These festivals gave occasion for theatrical performances and religious songs in which the legends of Hindu mythology were skilfully exploited to stir up hatred of the 'foreigner'—and mlenccha, the term employed for 'foreigner,' applied equally to Europeans and to Mohammedans—as well as

for tumultuous processions only too well calculated to provoke affrays with the Mohammedans and with the police, which in turn led to judicial proceedings that served as a fresh excuse for noisy protests and inflammatory pleadings. With the Ganpati celebrations the area of Tilak's propaganda was widely increased. But the movement had yet to be given a form which should directly appeal to the fighting instincts of the Mahrattas and stimulate active disaffection by reviving memories of olden times when under Shivaji's leadership they had rolled back the tide of Mussulman conquest and created a Mahratta Empire of their own. The legends of Shivaji's prowess still lingered in Maharashtra, where the battlemented strongholds which he built crown many a precipitous crag of the Deccan highlands. In a valley below Pratabghar the spot is still shown where Shivaji induced the Mohammedan general, Afzulkhan, to meet him in peaceful conference halfway between the contending armies, and, as he bent down to greet his guest, plunged into his bowels the famous 'tiger's claw', a hooked gauntlet of steel, while the Mahratta forces sprang out of ambush and cut the Mohammedan army to pieces"—that is what one had to remember when Shivaji is being held up. "But if Shivaji's memory still lived, it belonged to a past which was practically dead and gone. Only a few years before an Englishman who had visited Shivaji's tomb had written to a local newspaper calling attention to the ruinous condition into which the people of Maharashtra had allowed the last resting place of their national hero to fall. Some say it was this letter which first inspired Tilak with the idea of reviving Shivaji's memory and converting it into a living force. Originally it was upon the great days of the Poona Peshwas that Tilak had laid the chief stress, and he may possibly have discovered that theirs were not after all names to conjure with amongst non-Brahmin Mahrattaas, who had suffered heavily enough at their hands. At any rate, Tilak brought Shivaji to the forefront and set in motion a great 'national' propaganda which culminated in 1895 in the celebration at all the chief centres of Brahmin activity in the Deccan of Shivaji's reputed

birthday, the principal commemoration being held under Tilak's own presidency at Raighar, where the Mahratta chieftain had himself been crowned. What was the purpose and significance of this movement may be gathered from a Shlok or sacred poem improvised on this occasion by one of Tilak's disciples who was soon to acquire sinister notoriety." Those two passages deal with Ganpati and Shivaji.

Mr. Justice DARLING: Immediately after what you then read, there has already been read, I do not know whether by you or by Sir John, a passage from the Shlok at the top of page 46.

Sir EDWARD CARSON: Yes, my Lord, it was read and also the passage for which he was prosecuted comes up.

Mr. Justice DARLING: The passage from the Shlok seems to me to complete what you have read.

Sir EDWARD CARSON: I will read it, my Lord: "Let us be prompt like Shivaji to engage in desperate enterprises. Take up your swords and shields and we shall cut off countless heads of enemies. Listen! Though we shall have to risk our lives in a national war, we shall assuredly shed the lifeblood of our enemies. It was on the occasion of the Shivaji 'coronation festivities' that the right—nay, the duty—to commit murder for political purposes was first publicly expounded. With Tilak in the chair, a Brahmin professor got up to vindicate Shivaji's bloody deed." That we have had, my Lord, in the two matters with reference to which he was prosecuted.

Then, Gentlemen, at the bottom of page 49, there is this passage: "His influence moreover was rapidly extending far beyond Poona and the Deccan"—that is Tilak's influence—"he had at an early date associated himself with the Indian National Congress, and he was secretary of the Standing Committee for the Deccan. His Congress work had brought him into contact with the politicians of other provinces, and upon none did his teachings and his example produce so deep an impression as upon the emotional Bengalis. He had not the gift of sonorous eloquence which they possess, and he never figured conspicuously as an orator at the annual sessions of Congress. But his calculating resourcefulness

and his indomitable energy, even his masterfulness, impressed them all the more, and in the two memorable sessions held at Benares in 1905 and at Calcutta in 1906, when the agitation over the partition of Bengal was at its height, his was the dominant personality, not at the tribune, but in the lobbies. He had been one of the first champions of Swadeshi as an economic weapon in the struggle against British rule, and he saw in the adoption of the boycott, with all the lawlessness which it involved, an unprecedented opportunity of stimulating the active forces of disaffection. As far as Bengal was concerned, an 'advanced' Press which always took its cue from Tilak's 'Kesari' had already done its work"—it has been asked what had Mr. Tilak to do with Bengal, and what has his paper to do with Bengal, but you see he was acting in Bengal—"and Tilak could rely upon the enthusiastic support of men like Mr. Bepin Chandra Pal and Mr. Arabindo Ghose, who were politically his disciples, though their religious and social standpoints were in many respects different. Mr. Surendranath Banerjee, who subsequently fell out with Tilak, had at first modelled his propaganda very largely upon that of the Deccan leader. Not only had he tried to introduce into Bengal the singularly inappropriate cult of Shivaji, but he had been clearly inspired by Tilak's methods in placing the Swadeshi boycott in Bengal under the special patronage of so popular a deity as the 'terrible goddess' Kali. Again, he had followed Tilak's example in brigading schoolboys and students into youthful gymnastic societies for purposes of political agitation. Tilak's main object at the moment was to pledge the rest of India, as represented in the Congress, to the violent course upon which Bengal was embarking. Amongst the 'moderate' section outside Bengal there was a disposition to confine its action to platonic expressions of sympathy with the Bengalis and with the principle of Swadeshi—in itself perfectly legitimate—as a movement for the encouragement of native industries."

Now, Gentlemen, I have read those passages to point out to you that what Sir Valentine Chirol had investigated was the whole plan and plot that had been formed, and

was being carried out in India largely through the machinations of Tilak. Of Mr. Tilak's abilities there is no doubt: nobody, neither the Judges who tried him nor the writer of this book, have ever done him any injustice in that respect; he is a learned man, and a man who has graduated at universities, and taken his degrees in law, and anybody can see, from the style of writing, that he approved in the "Kesari"—whether he wrote it or got others to write it—how effective he was as a gentleman of education putting forward these different theories. Now, Gentlemen, it is not so easy for you and for me to realise fully in its proper perspective what all this great conspiracy meant in a place like India. You and I do not live amongst different castes and different tribes such as they have in India; people talk of India as of some great homogeneous nation. Nation after nation, tribe after tribe, caste after caste, with all their mysterious forms of religion and racial differences amongst themselves, renders the problem of the Government of India one of the most difficult problems that has ever been presented to the civilised world; and there is nothing, perhaps, of which this country is more rightly proud than that with all these divergencies the progress of India under Brtish rule has been of an extent and greatness of which I think the country may be rightly proud. But be that as it may, you have to picture to yourselves what all this raking up of Hindu mythology meant, what these Shivaji festivals, turned from religious and social festivals, into political festivals, as it is now admitted they were, meant. I am bound to say, if you look at Mr. Tilak's evidence when first examined in this case, he tried for a long time to say there was nothing political about it at all. Gentlemen, his own paper scatters to the wind statements of that kind. You can readily imagine with tribes and castes and races of this kind, what it means, the mixing up of religion and politics, the reviving and resuscitating out of back ages what I might call the mythology of these people in relation to their previous heroes. And so it is, you have in all these various towns time after time people prostrating themselves before pictures of Shivaji, singing in glorification of the murder

of Afzulkhan, singing the glorification of Shivaji as one man who had freed the Hindus from the Mahommedans, all this backed up with a strong religious notion that whatever were his methods and the success of his methods, they were justified by the religion of their race, and for those who adopted them and brought about similar results there was, in the theory of the religion, not only a free pardon, but glory and honour in time to come according to the acts that were done. So it was with Ganpati, this elephant-headed god; it was, as you will remember in some of these processions when the picture of the goddess Kali was brought out with the chain of skulls round her neck, the goddess of destruction. Just fancy that throughout these towns and villages of India becoming the regular modern politcal festivals brought up to date in order to stir souls of these people against the British Government, and to teach them that as Shivaji through his methods got rid of the Mohammedans with Swaraj—it has been proved in evidence that Swaraj was the policy of Shivaji—and as they got it for them, so if people only followed out these methods they would have the production of their religion and of their consciences if they brought about similar results in freeing the country from the foreigner or invader, the alien, the British, the leeches, the people who had in every office maltreatd them, the people who were never doing anything, according to Tilak, but trying as hard as they could to ruin the destinies of this unfortunate people. I say, Gentlemen, when you bring that to bear upon these years of agitation of Tilak's you can draw something in your own mind of the picture of the state of affairs which had to be dealt with in this country, and you can then, I think, realise what it meant in the midst of all that throughout an article like the article justifying the cult of the bomb throughout an article holding up to disrepute as a person put there as an oppressor, Mr. Rand, he was holding up our soldiers as being detestable demons, as he called them in some places, put there for the purpose, in the midst of their sorrows and plague-stricken misery, not to bring consolation, or effort to put down the plague, but really taking advantage of it for the robbery of their houses, the desecration

of their temples, and for the violation of their women. Gentlemen, it was a horrible story, a story which might have led even to far greater results than the murder, terrible as it was, of a few officials in India which was, as we ask you to say, the consequence of the teaching of this gentleman for his own political purposes. And, Gentlemen, what was it that was being promulgated at all these great festivals? Gentlemen, the case was opened—Swadeshi after all, what was it? To encourage native industries. No doubt, as Sir Valentine Chirol points out in his book, that is a proper legitimate thing and it may have been certain people had first started it with that intention; but was that what Tilak thought? Let me take you through a few matters connected with Swadeshi, and try and think there again at these festivals what the effect of these teachings would be. What was the Swadeshi? Swadeshi was that you were not to use foreign goods, and you were to apply yourself to get rid of all foreign ideas—and by "foreign" he meant British. In some of the passages I have read to you, you will remember this was plain: If you cannot get things here, get them from Japan or get them from China, or somewhere else in the East: if you cannot get them there, go to America; if you cannot get them there, go to France: if you cannot get them there, go to Germany, or go to Austria; but, above all things, do not touch the dirty British goods; that is the way to bring down the British. We cannot perhaps meet them in arms, but we can meet them in economic matters, and we can bring about a hatred and a hostility to the British by teaching the children from the time they enter our schools that everything British is, as it were, something accursed, to be burnt like the plague-stricken clothing in Poona during the plague-stricken time. Only bring your children up with that idea, that everything British is soiled, foul and not to be allowed into your houses, and then at all events you will have gone a long way to create this feeling of Swaraj or national independence, and this great English speaking nation, your oppressors, will be brought to their feet, Swadeshi—that is admitted in the papers that I put to Mr. Tilak—was propounded as a kind of national religion. There again you see the

bringing in and the mining up of religion as one of the strongest motive powers to people such as the Hindus and Brahmins, themselves a sacerdotal caste, stronger than it can possibly be in a country like England. They had to make a vow of Swadeshi sometimes in the presence of Shivaji's picture, sometimes in the presence of Kali, the goddess of destruction, but always a vow. And what was to happen if the vow was broken? You remember I cross-examined him about that, and you will remember how he wriggled over it but there were his words: to cast aside the vow means death. There you have as the basis of the whole of this propaganda the vow of Swadeshi at these quasi religious festivals, really great political machines and political engines—to cast aside the vow means death. "Better to have Swadeshi anarchy," he says, "than to be governed by an organised administration of English leeches." He advocated that it should be taught in the schools, he advocated that the English had knowingly ruined Indian trade, he had it preached at every festival, and he said the ultimate object was as I said to bring about a disappearance of foreign goods and foreign ideas. He had it spread amongst little children. Gentlemen, just try and bring your mind to some of these meetings that we have proved, to Nasik from which the whole conspiracy to murder Mr. Jackson proceeded, of which I had better say a word in a moment. Try and picture Savarkar, Tilak, Paranjpe, the two Savarkars, Bhat, all of them convicted afterwards; picture them there as the teachers of these people, and of these little children, and in the midst of the festivities, little boys and little girls in the midst of songs, rejoicings and cheerings, and encouragement of the great Tilak bringing in their shoes and their stockings, and their clothes, and burning them up as a great pile for the glorification of India, and the damnation of British rulers. You cannot shirk it in this case, because that is the fertile soil on which his propaganda was operated, that was the fertile soil, and that was why, in reading the confession of Kanhere on Friday, I put in one of the most pathetic documents in the course of the history of any conspiracy. This was a young man of 17, taught and brought up in the midst of all this conspiracy

of crime, in the midst of all this effort to infect his childish religious instincts that this was part of the great religion, freedom. A boy of 17 telling his confession of how he discussed whether he would murder the Judge who sentenced Tilak, or whether he would murder somebody else, and in all of it, not a word of any oppression that had ever come to him, but something he had been taught by reading the "Kesari," and reading other similar papers like the "Kal," Mr. Paranjpe's paper, the friend of Mr. Tilak, and the "Rashtramat," of which he was a reader. It is a nice story. I suppose that boy was hung, or punished, I suppose it had to be so, but it is a pitiable story, and you could expect nothing else. He was not the only one. You could expect nothing else from the great teacher of these boys, and then, Gentlemen, you remember the lengths to which he put this matter of Swadeshi, when he said that at a marriage unless you adopted Swadeshi as a policy and Swadeshi in practice, and Swadeshi in relation to marriage, you must not be astonished that within a few days the bridegroom may die, or the bride may die, because you do not adopt Swadeshi. He was asked by my Lord whether he believed that himself, and I really cannot make out what his answer was, whether he did or did not, but at all events he said it was necessary to teach it to the people. You and I may laugh at it, and you and I may think it sheer folly, a mere joke, a sort of dramatic performance—that is why he brings it here very likely, but in India they would know what it meant, they would know the full effects of the teaching of this man. I say that that explanation of the punishments by him shows the lengths he was prepared to go. In another article, he says: "that those who do not adopt Swadeshi, or break the Swadeshi vow, must remember that they bring the curses of all enlightened teachers, professors, and other persons upon them." Gentlemen, there is the soil on which he was operating. This is all what Sir Valentine Chirol had before him, and the man who has laid all this down —I cannot help repeating this—the man who has been allowed to enjoy a latitude, I venture to think, which amounts not to liberty, but to license, the man who lays that down may be a most sincere man; I know nothing

about him, I never saw him till I saw him here; he may think it is all necessary, but that he should come into a British Court of Justice and say: Give me damages to set up my character in India—because his character here does not matter—I, who have done this day after day, week after week, year after year, I, who have educated the children and the students in the doctrines which have brought them to sorrow and grief and misery—I come to a Court of Justice, and I ask damages to set up my character. For what? In order that I may go back to India, and that I may tell my people there: At all events, in London I could get a Jury who say that I can go on teaching Swadeshi and Ganpati, and write as much as I like about the cult of the bomb, and hold up British officers and British magistrates to opprobrium—I may do all that—that is the verdict of the Jury in London. Do not mind what they say here. Perhaps then he hopes he will be another step towards the Swaraj and driving out the British Government from India which he has so long tried to effect.

Gentlemen, that was not done, as I said before, merely at Poona. It was done in all these various places which I have read out to you, but above all, it was done at Nasik. Now, Gentlemen, I want to draw your attention to a few facts with reference to Nasik. It was at Nasik Mr. Jackson was murdered. Who Mr. Jackson was, you will hear, what kind of man he was you will hear, one of the kindest hearted men, according to the instructions that are given to me, that has ever occupied a position of the kind in India. I think he was for a while private secretary to Lord Sandhurst, who was the Governor General, and Lord Sandhurst can tell you all about him. At Nasik Mr. Jackson was murdered, and there was found to exist there a conspiracy in which a number of persons were engaged for waging war upon the British people, or rather British Government, and also the conspiracy to murder Mr. Jackson. Now you remember—it may not have appeared why it was essential to go into it at the time—I laid, or attempted to lay in my cross-examination, considerable stress upon the activities of Mr. Tilak in relation to Nasik and Nasik's people. Who were the leaders at Nasik? There was Vinayak

Savarkar, and there was Ganesh Savarkar. Now I want you just to follow, as regards these gentlemen, what the story of Mr. Tilak is as far as we could get it out of him. He says that as far back as 1905 Ganesh and Vinayak Savarkar and some others he thought were inclined to transgress what he called constitutional methods, that is, I suppose, to go further than him, and he met some of them at the club there, and he warned them. Of course, we have only his word for that. I myself have been unable in such extracts as I have of the "Kesari," to find any warning publicly made, nor do I understand him to say any warning was publicly made. But then, what happens afterwards? You find meetings of the kind I have been describing held in Poona, to which the Nasik boys came. You find in the same way Mr. Tilak going up to Nasik and having some performances there. Now, Gentlemen, these Savarkars, Ganesh and Vinayak, were on the platforms with Mr. Tilak preaching the same doctrines long after he had given them this warning. What happened? Vinayak Savarkar came to London. How did he get to London? I read over the Shorthand Note of what Mr. Tilak said, and I am bound to say anything like his prevarications it is impossible to imagine. I asked whether he had recommended him for a scholarship which enabled him to come to London. We know there are scholarships given to enable Indian students to come to London. Well, he shuffled about it, and at last admitted that he did sign a paper; what exactly the paper was he would not tell us, but that it was a paper which enabled this man to come to London is beyond all doubt; and when this Vinayak Savarkar came to London he wrote a book on Mazzini, and when it went out to his brother at Nasik, this same book on Mazzini was dedicated by Savarkar to Mr. Tilak. I am not going now to stop to read you the reviews of that book in the "Kesari," and the lessons that are drawn from that book for the sacrificing of your life for the independence of your country in accordance with the theories of Mazzini. Gentlemen, Mr. Tilak says—now do you believe him when he says this—he cannot recollect anything about that book. He does not think he ever read it. Savarkar, the student that he sent over

here, sends a book all the way to India, dedicates it to him, and he cannot tell us whether he ever read that book. That is because he does not wish us to be able to question him about it; but do you believe it? This Vinayak Savarkar was eventually, while he was in England, found sending the pistols out to Nasik, one of which murdered Mr. Jackson, and for which he was eventually transported for life. Savarkar used to be on the same platform with Mr. Tilak. It might be explained if Savarkar was the only one of his friends who was in a similar predicament, but, Gentlemen, the other Savarkar, Ganesh Savarkar, who dedicated this book to Mr. Tilak, published a book of poems, a book of poems very highly commended in the "Kesari"; the author is said to be a man named Govind, which you may remember is the same name that appears in some of these poems from Nasik sent to the "Kesari" from time to time. This gentleman was prosecuted for those poems, and he has paid the penalty by a long transportation. There is only just one passage that I would like to read, as a specimen of Vinayak Savarkar's speeches, which appears at page 227: "Vinayak made an interesting speech for 1½ hours, he said as follows: 'At the time of any revolution agitation must certainly arise. Following this rule the agitation for "Swadeshi" has become prevalent now. Without a fight no country whatever gets "Swaraj." The nature of this fight changes according to country and times. At present we have to fight with Swadeshi movement and boycott as instruments.'" I read that to show how it is exactly the teaching of Tilak. So far for the Savarkars at Nasik.

Then, Gentlemen, there was another leader at Nasik over and over again on platforms with Mr. Tilak, a Mr. Bhat. You may remember when we read through the passages, seeing his name from time to time; Bhat was another gentleman found guilty of the conspiracy at Nasik at the time of Mr. Jackson's murder. Bhat was another of Mr. Tilak's friends; he is not very fond of him while this case is going on, and I will tell you why. Bhat has served his term of imprisonment like Mr. Tilak; where

did he come for employment when he came out? To Mr. Tilak. Where is he now? In Tilak's office. Who helped Mr. Tilak to get up this case when the Commission was out in India taking the evidence about it? Mr. Bhat. So that at all events there is this to be said for Mr. Tilak, and it is the highest defence you can make for him in relation to these convicted felons who have brought about all this misery out there, that he really has never taken the pains to inquire into why they were convicted. He knows nothing really about why they were convicted, what they did, or anything else. When I asked him about it in the witness-box, he has a wonderful innocence. Just fancy entrusting the helping to get up your case which had to deal with this Nasik conspiracy to a considerable extent when you are coming forward to say: I know nothing about all this conspiracy or these conspiracies—indeed he swore the first day he was examined that he did not know any of the people who were convicted—just fancy going to this man Bhat—in this case Bhat was a pleader—and getting Bhat, the man up to the neck in the whole of this matter which Tilak was going to disavow, to come forward and help him when the matter was before the Commissioner taking the evidence that we have heard. And with him now! Then there was a gentleman of the name of Bijapurkar; who travels about and went on his platforms; he is printed in the volume as Vijapurkar, but I am told the two names are the same. Who was Vijapurkar? Mind you, one of the things that Tilak is complaining of here is that we said he introduced these doctrines into the schools. Who was Vijapurkar? He was the man who, with Tilak, said we must overthrow the Government schools; they will not allow the children there, there is a row going on, the teachers are getting into trouble because they will not allow children to be taught Swadeshi and the vows of Swadeshi and the example of Swadeshi, and the sacrifices inculcated by the Ganpati festival; we must get rid of all that, and so Vijapurkar goes about with him, travelling with him to raise funds to start schools of their own where they might teach them treason and sedition and all the other theories that will be so useful when they grow up,

become students in the gymnasia, and become no doubt editors of papers and other things of the kind. He is the gentleman who goes about with Mr. Tilak, and I may remind you, Gentlemen, that as regards Vijapurkar he started one of these schools at a place called Talegaon in the Poona district. Eventually the Government had to interfere, and this school was closed up by an order which I read to you. This school was closed by an order of the Government as having for its object the interference with law and order and authority, and of being a danger to the public peace. That was the school that Mr. Tilak was encouraging and collecting for with Vijapurkar. And he wants damages! Then there was his other pal, who was convicted of sedition. Mr. Tilak said all his friends were not convicted of sedition, but a good many of those that he was going about with were convicted of sedition. Then I took up another gentleman whom we have had something of in this case who ran a paper at Poona called the "Kal," Paranjpe, who was the gentleman who you will remember was in Mr. Tilak's room at the time when Mr. Tilak was arrested or summoned—I do not know how they do matters out there—for sedition. What was he doing in this room I asked?

I was helping him with his defence. Look what a nest of them there were. I was helping him with his defence. With his defence for what?--for sedition with which he was charged, and Paranjpe was convicted. What was the style of the articles he was writing? Was it in praise of the bomb, was it in praise of similar things you were to do, was it to stir up and stimulate disaffection? "Oh, I knew nothing about it. I do not know what Paranjpe wrote in the rival paper, if it was a rival paper in Poona". An extraordinary thing! I suppose it is probably a feature of his race that he never had the curiosity to see what was in his rival's paper, and though he was helping his rival in his case he never had the curiosity to ask him what he did write, or whether it was on similar lines with his own, and even when he had gone to gaol and he had no longer the comfort of his associations in the next room at the hotel he never had the curiosity of asking Paranjpe when he came out of prison

what right had they to do that. "What kind of things did you put in your paper?" "I never knew anything about it. Anyway, whatever it was you were only run in for sedition. You and I always will be friends as ever we were." That is the character of Tilak. The one thing he has a horror of is anybody exceeding the law in a constitutional way, but the moment they come out he says: "Well, we are as great friends as ever we were." This has been going on for fifteen years. You find Paranjpe on many occasions associated with Tilak at the Shivaji festivals meeting together at the meetings where they met for the purpose of burning English goods. How often does he refer to that? They had a special meeting together in Bombay for the purpose of giving a start to Swadeshi. We are told that Bombay is a long way off. Really on this question of distance I believe it to be a fact that he saw him often, but there is nowhere in the world that news travels quicker than in India in consequence of the constant traffic from one place to another, but there you find Tilak and Paranjpe travelling together to Bombay, and they travel together to address a meeting in connection with Swadeshi. You find Paranjpe and Bhopatkar addressing meetings of students on Swadeshi: You find Tilak and Paranjpe at Poona school and Paranjpe explaining how useful such institutions are in educating boys in polished and patriotic thoughts. You find later on Tilak and Paranjpe taking part in these same celebrations in Poona, and you find Tilak and Paranjpe together at the congress at Surat. Gentlemen, what became of Paranjape? Paranjpe was also convicted. This other gentleman, who was a friend of theirs who is mentioned, Bhopatkar was another friend. You find in the case of Bhopatkar that Tilak took the chair just before and just after he came out of prison on another charge of sedition. Then there is a gentleman named Modak that I cross-examined him about. He was also manager of the "Rashtramat," of which this gentleman was a member. Modak in the same way we find in gaol for the same class of crime. Gentlemen, I suppose if we were to go on for not only hours but days and weeks, there could be vast evidence given of the nature of this

conspiracy all through India, but it is enough for me in this case to say that we have proved up to the hilt that Tilak was taking part, indeed was a leader, in the conspiracy against the British, which was the origin of the whole of this, and it is for you to say now, knowing what was the nature of this conspiracy, what was the length to which he went, what his teachings were, whether in addition to the matters I have put before you on the last day you have not ample material, and whether Sir Valentine Chirol had not ample material, to draw the conclusion that it was these teachings that were leading to these outrages. So I pass for the present from the Paranjpe case.

Now, Gentlemen, there are other matters complained of. May I say this, that I never admired the ingenuity of Sir John Simon more than when he deliberately set himself out to make out a number of separate libels. Of course, it is for my Lord to say how the matter is to be dealt with, but I suggest to you that you have to take this book, as far as it concerns Mr. Tilak, as a whole. They are pleaded here as separate libels. There is one innuendo for the whole lot, and it is not the proper method to select a libel here and a libel there and say that they are separate libels. Supposing, for instance, you come to the conclusion that this gentleman was guilty of teachings and propoganda which led to the murder, or that it was a fair inference that they led to the murder of Mr. Rand or Mr. Jackson or both, what damages is Mr. Tilak going to get because you said he was a member of an Anti-Cow-Killing Association, or that he had a gymnasium. What is the Tai Maharaj case or these other small trifling things as compared with the realities in the book. The book deals with his whole conduct in relation to the agitation. You might as well tell me that if a man is accused of murdering his mother-in-law and of stealing a pipe out of his father-in-law's pocket and it was proved that he did murder his mother-in-law and he did not steal the pipe that he would get damages! The thing is absurd.

Mr. Justice DARLING: I suppose, Sir Edward, in the case you put, the judge would have to leave it to the Jury, and that is just why the question of whether the

thing complained of is a libel entitling the person to damages or whether it is not, is left to the Jury and not to the Judge to decide.

Sir EDWARD CARSON: Yes, my Lord. What I respectfully submit is that it is for the Jury to say whether there is a libel anywhere in this book.

Mr. Justice DARLING: Yes.

Sir EDWARD CARSON: I submit that to take them and say specifically: "Is A a libel and is B a libel" and put them all as separate questions is not the way it is ever done with regard to these matters.

Mr. Justice DARLING: If you can make out a libel in a book of 500 pages or if you can make out one libellous statement, of course, if on the face of it, the thing may be libellous, the Judge must leave it to the Jury and it is for the jury to decide, having regard to the whole thing. The Jury will say whether it is a libel at all, and, if it is a libel at all, having regard to the whole thing, what are the damages. It is for them to say whether it is a libel at all, and not for me. You will understand that?

Sir EDWARD CARSON: Yes, my Lord. Now, Gentlemen, let me say a word as regards each of the passages. I am bound to say, Gentlemen, it is a matter for your consideration as to what effect it has upon you, but I am bound to say it is a most extraordinary way in which this case is brought into Court, because not only are the passages taken out of order, but in fact the first paragraph complained of in the Statement of Claim comes after No. 2, and it is really only by reading the two together that you get the reality of it. Then, again, as in the case I have already drawn attention to, about the Rand murders, he leaves out a sentence in the middle of the paragraph. He left that out, as I pointed out to you on Friday, and he does the same again in what is called his first libel. Take Sir John's way of demonstrating it. At page 43: "If amongst many Brahmins of Maharashtra hatred of the British is the dominant passion, amongst the Mahratta population at large whatever there is of racial and religious jealousy is mainly directed against the Mohammedans. This is partly, no doubt, a legacy of the old days of Mohammedan

supremacy. In 1893 some riots in Bombay of a more severe character than usual gave Tilak an opportunity of broadening the new movement by enlisting in its support the old anti-Mohammedan feeling of the people." Now he leaves this out: "He not only convoked popular meetings in which his fiery eloquence denounced the Mohammedans as the sworn foes of Hinduism, but he started an organisation known as the 'Anti-Cow-Killing Society.'" How on earth a man can ask damages—supposing there was nothing else in the case now but this particular passage—how he can ask damages because it is said he started an Anti-Cow-Killing Society, to provoke the Mohammedans, but does not complain of your saying he "convoked popular meetings in which his fiery eloquence denounced the Mohammedans as the sworn foes of Hinduism . . ."—I do not really understand. Perhaps it is not really worth going into it in that way because what are the facts that are now proved as regards this. I asked him, would it be a libel to say a man belonged to an anti-cow-killing society, and he said No. Nearly all the Brahmins belonged to it, but the point apparently was that he started an organisation. What are the facts with regard to that. There were a number of anti-cow-killing societies which were a kind of religious societies. You find exactly the same here in relation to Shivaji and Ganpati which were religious societies. We all respect the Hindu, and we all know that he dislikes the killing of kine, and nobody would say anything in relation to that part of his religion. That existed as a religious thing, but what did Tilak do? You will see it is on a par with all the rest of his conduct. Tilak said: "Oh, no, you ought to turn all these anti-cow-killing societies into one great political organisation." That is the point of it. That is where the mischief came in. You will find it at page 97. He was cross-examined about it. "The Go-Rakshana"—that is the anti-cow-killing—"Sabhas also ought to adopt the same course. What that course is, we will shew in detail some time hereafter. To-day we shall tell only two things of principal importance. The first thing is not to transgress the limits of law, whatever may be the nature of persecution done;

and the other thing is, all to make a combined and joint effort, instead of making separate movements by establishing separate Sabhas (i.e., societies) at different places. There are many Go-Rakshana Sabhas in the North-West Provinces. There are two in Bombay. There is one at Poona. And also at other places in the Maharashtra there are or were such Sabhas. And in the Districts of Nagpur and Wardha, this work of Go-Rakshana (i. e., cow-protection) is carried on very systematically. That being so, if all these Sabhas (i. e., societies) were brought together and one general Sabha (i. e., society) were established for the whole country, the people of different places would become acquainted with one another and also would receive more encouragement to do the work. In this matter some one must take the lead. And we think that this work will be well accomplished by the promoters of the Go-Rakshana Sabha of Nagpur." Then if you turn on to page 103—this is a very simple matter—you find that Nagpur took it up: "Many are aware that this Sabha (i. e., society) was started five or six years ago and its annual festival is held on a large scale. But this subject had not received a national aspect up to this day. Efforts were made this year to give it that aspect; and as we think that those efforts have met with considerable success, it is desirable that at least some information regarding the said festival should be given to the readers enthusiastically." I am not really going to pursue this because to say that it is a libel that he originated a cow-killing society when he really originated the joinder of them all as one great political society which was far more formidable is really absurd, and then say that it is regarded as a direct provocation of Mohammedans. Nearly half the first volume we have here shows provocation to the Mohammedans. This was protested against by liberal Hindus. You remember at the meeting which was held in reference to the riots there were a number of people, including a man who stood for them as a moderate reformer in India, who was afterwards Mr. Justice Ranade. They put in their protest against this being carried on notwithstanding that the resolution dealt with the Cow-Protection Societies, and there is

article after atticle here, I have them all marked but I am not going to take up your time now. There is article after article in which he says that these British have always sided with the Mohammedans: "They side against our Anti-Cow-Killing or Cow-Killing Societies, they send down corrupt magistrates, magistrates who are put there purposely to do injustice towards the Hindu and to take up the Mohammedans over and over again, and they go on, and he encourages them to parade their processions in front of the Mohammedan mosques where they dislike music to pass their services." Then he comes here and makes complaint about this. I do not think I would be justified in taking up your time any longer with that. Well, the second one that is complained of is: "With the help of the brothers Natu, who were the recognised leaders of Hindu orthodoxy, he (meaning the Plaintiff) carried his propaganda into the schools and colleges in the teeth of the Moderate party, and, proclaiming that unless they learned to employ force the Hindus must expect to be impotent witnesses of the gradual downfall of all their ancient institutions"—really after what I have called your attention to about his relations with the schools, in connection with the Shivaji and Ganpati I do not think it is necessary I should further trouble you about that.

Now, Gentlemen, the next one is this question of the Tai Maharaj.

Mr. Justice DARLING: There is this on page 2 of the Statement of Claim: "He must have had a considerable command of funds for the purposes of his propaganda." That is from page 53 of the book.

Sir EDWARD CARSON: I was taking them in the order in which they are in the book, my Lord. They are taken up and down in the Statement of Claim. This comes on page 49. Now, Gentlemen, if you will kindly turn to this, my learned friend, Sir John Simon, following what was said in the solicitors' letter that this was one of the most important of the lot, if not the most important, spent a great deal of time explaining about this Tai Maharaj case, but after all reading it down just see what it comes to: "For three or four years the Tai Maharaj case, in which, as executor of one of his friends, Shri

Baba Maharaj, a Sirdar of Poona, Tilak was attacked by the widow and indicted on charges of forgery, perjury and corruption, absorbed a great deal of his time, but, after long and wearisome proceedings, the earlier stages of the case ended in a judgment in his favour, which was greeted as another triumph for him, and not unnaturally, though, as recent developments have shown, quite prematurely, won him much sympathy, even amongst those who were politically opposed to him." Gentlemen, you will observe from that that what the comment states is that he won everything except this matter that went before Mr. Justice Chandavarkar, which is set out at page 340 of the notes. Now, Gentlemen, of course, if we put in there a false account of Mr. Justice Chandavarkar's judgment, or if we put in a false comment upon it we would be liable, and it is quite right we should, but there is nothing in the account given of the trial there or of the result which can be complained of as being libellous. Your Lordship sees it is treated as a fair report of the judgment of Mr. Justice Chandavarkar.

Mr. Justice DARLING: It is pleaded that what is said is true, that the way it is put is true, and that it is a fair and accurate report of the judicial proceedings.

Sir EDWARD CARSON: Gentlemen, you will understand that reporting a case in the Courts or the result of a case in the Courts so long as it is an accurate report and a fair report of the trial never can be libellous. For instance, the result of this case, if we ever get to the end of it, when it is published hereafter, if somebody writes a further history of Mr. Tilak, Sir Valentine Chirol or whoever is interested in this matter, if the result is truly chronicled no one can ever take a libel action for it, and what we say as regards this is—I am not now dealing with the last three libels which I deal with on a different basis—that this is a fair report. You see there the real part that hit Mr. Tilak is this: "On the other hand they had two men of influence learned in the law (meaning the Plaintiff and the said Khaparde) taking her to an out-of-the-way place ostensibly for the selection of a boy, and then, as it were, hustling her there by representing that everything was within their discretion, and thereby

forcing her to adopt their nominee. In these circumstances they came to the conclusion that the adoption was not valid, because it was brought about by means of undue influence exercised over Tai Maharaj by both Tilak and Khaparde." That is that Tilak and Khaparde took advantage of their superior position in every way to use improper influence over the Tai Maharaj in getting her to adopt this child. Now, Gentlemen, all I have to show as regards that is that that is an accurate report of the trial before Mr. Justice Chandavarkar, who was an Indian judge. I really do not understand my learned friends about this, but they have not put in Mr. Chandavarkar's Judgment to show that it was an improper report or inaccurate in any way, but we will put it in.

Sir JOHN SIMON: I thought you had put it in. I thought the report has already been put in. My friend made reference to it. Anyhow there will not be any dispute that it will be in.

Mr. Justice DARLING: The question is whether this in Sir Valentine Chirol's book, which is a synopsis of a very long trial, is a fair account of what passed. Just as a man might write a book upon the Tichborne case and put into two pages an account of the case, although the case went on for months and months. Of course the report can be a fair and accurate report although it is abridged.

Sir EDWARD CARSON: Now, my Lord, I will read a passage from Volume 4, page 317. This is the Judgment: "But at that session all that was decided was that the parties should go to Aurangabad merely to select and approve. This undue haste only adds to the strangeness of the place and surroundings, amidst which this young woman misinformed as to her rights, believing, because led to believe, herself to be dependent upon the executors even as to the amount of her maintenance, was persuaded to make the adoption. In this state of facts which stand out on the record uncontroverted it is impossible to hold that the adoption was made by Tai Maharaj willingly and not as the result of unfair means adopted by the leading executors of her husband's will." Now this next passage is almost copied into the book: "The facts contain all the elements of undue influence on the one

hand, a young, inexperienced widow, with a right of ownership, but ignorant of that right, and led to believe that she was legally subject to the control of the executors of her husband's will as regards the management of the estate which she had by law inherited from her son, prevented from going to Kolhapur even to attend a marriage in a family of relations; anxious to adopt a boy from Kolhapur as far as possible; and on the other hand, two men of influence, learned in the law, taking her to an out-of-the-way place ostensibly for the selection of a boy and then as it were hustling her there by representing that everything as to her was within their discretion, and thereby forcing her to adopt." Then, my Lord, at page 320—I will not read it all, but I put it all in if there is any question about it: "Under these circumstances I can come to no other conclusion than that, assuming that the fourth Plaintiff was adopted at Aurangabad, the adoption is not valid, because it was brought about by means of undue influence exercised over Tai Maharaj by both Tilak and Khaparde." The real gist of the charge is undue influence. My friend thinks I ought to read on to make it clear. There was another Judge in the case and he gave a Judgment. This is at page 346: "But if my inference be correct we are driven to believe that a considerable number of men of good position have conspired together to give false evidence. This unfortunately is not incredible. It becomes the less so when it is recalled to memory that the conspiracy to give false evidence was first organised to protect Mr. Tilak against a conviction for perjury in a prosecution launched in a manner which must to his friends have seemed peculiarly harsh and undeserved. The story told in this case is merely a repetition of that which was elaborated for the criminal trial." My Lord, I refer to that passage so as to show that really we have not put in the most severe comment of the Judge in giving an account of the trial, but we have given merely the substance of the legal decisions. Of course, Gentlemen, you are aware that that Judgment was afterwards set aside, and if, of course, after it had been set aside this had appeared Mr. Tilak would have had a legitimate cause of complaint. So far from that being a

fair account of the trial there comes this statement: "Mr. Justice Chandavarkar is a Hindu Judge of the highest reputation, and the effect of this Judgment is extremely damaging to Tilak's private reputation as a man of honour, or even of common honesty." You will say that being the Judgment whether that is not a perfectly fair comment. How could two men, assuming that that Judgment had been a correct Judgment on the facts—take this young inexperienced widow with a right of ownership but ignorant of that right and convey to her that she was legally subject to certain obligations and rights—two men of legal training—how could they take her away to an out-of-the-way place and then by means of an undue and improper influence exercise over her—assuming that they did it—without its being extremely damaging to the private reputation of a man of honour or even common honesty. It is impossible, and I submit that that is a perfectly fair comment on the matter as it stood at that time.

Now, the next matter which my learned friend Sir John Simon drew attention to, not the next in the Plea, but the next in the book, is at page 53. I must read a few lines before it: " His primary motives may have been excellent, but he subordinated all things to his ruling anti-British passion, whilst the fervour of his philanthropic professions won for him the sympathy and co-operation of many law-abiding citizens who would otherwise have turned a deaf ear to his political doctrines. He must have had a considerable command of funds for the purposes of his propaganda, and though he doubtless had not a few willing and generous supporters, many subscribed from fear of the lash which he knew how to apply through the Press to the tepid and the recalcitrant, just as his gymnastic societies sometimes resolved themselves into juvenile bands of dacoities to swell the coffers of Swaraj."

Now, Gentlemen, let us see what the fund was and how he put forward his fund in his paper. I read it to you before, but in this context it is necessary to take it again. You will remember we had some controversy about the Paisa Fund, which was a propaganda fund, as I will show you. Your Lordship will find the nature of

it at page 1019, where there is a full article on the subject of the Paisa Fund. Halfway down the page it says: "It is most essential to a nation at the time of its transitional period that the majority of that nation get accustomed to devote this particular gift or that particular service to the object which is most essential to the nation at that particular time whether that object is religious, industrial or educational. In our present national movement the 'Paisa Fund' is bringing about the fulfilment of the above object. The 'Paisa Fund' teaches all people how to utilise their money and bodily power to the national object in a natural manner. When the people will get accustomed to this teaching and when they will as a fact get to taste the sweet fruits thereof, that is to say, when the 'Paisa Fund' will enter into the daily programme of the household of the people, this fund along with the household life will not fail to be prosperous. When once the current of the innate desire of the people to do good acts turns towards the new national object—then nobody will have the power to stop that current until it reaches the ocean, that is to say, until the fulfilment of the desired object, and if in its course even a mountain of the old sins of a nation were to bar its passage, it would reduce to dust the formidable looking blocks of its stones and make its way even through the mountains. The 'Paisa Fund' is trying to yoke to the wagon of the industrial and educational movement the physical energy of the time which the people can spare (from their household duties) and their moneys which they can spare after the expenses of their household affairs are defrayed. When these two things are yoked to any wagon, no official class will have in its hands the power to stop the motion of that wagon. Only when the above pair takes off its necks from under the national yoke, then only, the further motion of this wagon will stop. What we call 'Government' is conducted only with the help of the physical energy and the money which a nation can spare after doing its daily worldly life. When a Government lays its hands on the physical energy and the money power necessary for conducting the daily worldly life of a nation, then that Government takes no long time to go down the way of becoming extinct. If he could generate

at present a universal tendency in our people to utilise towards a national object the physical energy remaining after doing their daily work (duties and business) and the money which they could easily give to charity after defraying the expenses of their daily requirements of the householder's life, then it would not take a very long time for the nation to see the dawn of its good fortune. The 'Paisa Fund' is generating that tendency and it is the duty of every Maharashtrian who gives a thought to the welfare of his nation to make the undertaking of this fund a success. The work of the 'Paisa Fund' is threefold. The first part is to make the industries and the education thereof undertaken by the Paisa Fund a success. Some work in connection with this is likely to be done by stipendiaries. The fund must be large enough to maintain the persons who conduct the manufactory and the teachers who do the teaching work as paid people, but the work of determining the nature of the manufactory, the lines on which the education there will be conducted and such other things should be done by the learned and circumspective people of the Maharashtra in their own spare time and with their spare moneys as a matter of benevolence. In order that the attention of the thoughtful and the persons conversant with these matters in the Maharashtra may be given to the 'Paisa Fund' may obtain in time the moneys required for defraying the expenses for going on the lines laid down by such people, it is necessary to create an awakening among the people with regard to this fund. It would not do to rely on stipendiaries for creating this awakening among the people. The burden of these stipends is (will be) at present too much to bear for this fund. Again the fund has not reached that stage where the people would believe what the paid teachers might preach. This work of the awakening must, therefore be done of their own accord by persons who are carrying on various movements of their own. It is necessary that all kinds of writers, speakers and workers should carry on the work of this fund along with the work of their movements." Gentlemen, that is the Paisa Fund, a fund for the propaganda which was to be carried on by those methods, and you will recollect what was advised in relation to the marriage

ceremony and the Swadeshi movement in regard to this fund. At page 810 there is a passage to which I referred in another context: "As the Swadeshi movement has now met with the full approval of all thoughtful persons in the country, to act contrary to the principle of Swadeshi during marriage ceremonies is tantamount to voluntarily inviting and taking upon one's own head the curses of all learned, working, responsible and thoughtful, saintly persons in the country. In the auspicious ceremonies such as marriages, to violate the vow of the nation regarding the use of Swadeshi articles means precisely to create an ill-omen to the new Mangalsutra. Foreign cloth, foreign sugar and foreign unnecessary articles of luxury ought first to be dismissed from auspicious ceremonies. It is desirable that the Chudas of the newly-married bride should last for ever, therefore no wise man will like that the sin of delivering over the hands of our women into the hands of foreign goods should be incurred in marriages at least by putting foreign bangles round the wrists of the bridegroom's mother. When the bride and the bridegroom and their friends and relations shall have accepted the Swadeshi vow in marriage ceremonies in this manner, then for the sake of the completion of the said vow in all its details, it is necessary that the money-presents given at feasts should go to the Paisa Fund and a due proportion of the saving thus made, owing to the vow of Swadeshi in the expenditure regarding superfluous articles of luxury to the Maharashtra Vidya Prasarak Mandali. This the persons taking a leading part in marriages must not forget." You see, Gentlemen, in the vow of Swadeshi which they were all to take, they would not be carrying out their vow unless they gave part of these marriage gifts, and what was saved from the marriage expenses to the Paisa Fund, and that other fund of his. That was his lash, because we know from what I have quoted to you already, that to break the vow as he says, meant death. I am not going to elaborate this. I think it is perfectly clear what this means. The application of the lash referred to his methods of dealing with these matters, and also refers, no doubt, to the way in which Mr. Tilak was prepared to abuse

everybody who dissented from it. I will give you two instances. You remember Mr. Gokhale had the audacity to apologise to the Governor General with reference to a false statement he had circulated with regard to their conduct in carrying out their plague duties at Poona. I read to you the way in which he is treated in that book. You will remember the loyal subjects at Poona had the audacity to present a petition expressing their loyalty to the Governor at the time of the Durbar. You remember the way he deals with that there. I drew your attention to the way in which he dealt with the native princes who had the vileness to come over here to attend the Diamond Jubilee of the late Queen. You saw the way in which he dealt there, not only with them but with our own King here and the insults he put forward with his usual virulence against other British people. That is the kind of thing referred to here. It does not mean that he took up a lash and went out into the market-place and lashed people around.

Mr. Justice DARLING: It says he applied it through the Press.

Sir EDWARD CARSON: Yes, my Lord.

Mr. Justice DARLING: It says: "The lash which he knew how to apply through the Press."

Sir EDWARD CARSON: Yes, my Lord. "Just as his gymnastic societies sometimes resolved themselves into juvenile bands of dacoities to swell the coffers of the Swaraj." Swaraj was the ultimate object, and we will prove to you beyond doubt on their own confession that there were men—young men, boys practically—who were convicted of dacoiting, on their own statements for the purpose of assisting Swaraj at Nasik. I really do not think it is worth while going on—

Sir JOHN SIMON: I am sorry to interrupt my learned friend but in view of the reference which has just been made to page 840 (I quite follow he is suggesting that is a passage which supports the justification about applying the lash), I must ask your Lordship to see whether that is within the Pleading. It is Volume 2, page 810.

Sir EDWARD CARSON: It is where he says as part of the Swadeshi, they ought to contribute to the

fund.

Sir JOHN SIMON: Yes, that is the page. My learned friend, in opening to the Jury now, is calling attention to that passage which is from the "Kesari" of the 15th January, 1907, as part of the justification for this particular libel. In the Pleadings, your Lordship will find, I hope, the Order that was made. The Order was made in Chambers in the ordinary way. Particulars were to be given "of the names of the persons who subscribed 'from fear of the lash,' of the amounts subscribed by each of them respectively, the dates of the subscription, and the persons or funds to whom subscriptions were sent, and of the facts and matters relied upon in relation thereto." That, my Lord, in the Order for Particulars, is marked with the letter (C).

Mr. Justice DARLING: What is the date of the Order?

Sir JOHN SIMON: 26th May, 1916. These are Further Particulars pursuant to the Order of the 26th May, 1916. It is (C) and the Order was that we were to give particulars of the facts and matters relied upon in relation thereto—that is the lash libel. My learned friend delivered particulars, and they are marked (C), of the facts and matters relied upon. I stand corrected if I am wrong, but I have done my best to follow it. I have not at present followed that this article, which my friend is now founding upon, is one to which we are directed at all in this connection.

Mr. Justice DARLING: What is the answer when the Particulars are given?

Sir JOHN SIMON: It is the paragraph which is marked (C) on page 3: "The facts and matters relied on in relation to the subscriptions from fear of the lash are the following publications by the Plaintiff in his newspaper the 'Kesari.'" Then your Lordship will see some particulars are given. I have been through them and I was unable to see how any of them supported it at all. The one which is now being referred to is an extract of the 15th January, 1907.

Mr. Justice DARLING: In the Particulars it does not refer to that one.

Sir JOHN SIMON: No, my Lord. My learned friend

is at liberty to refer to any of those others.

Mr. Justice DARLING: But how can you object to his referring to this one? It is not disputed.

Sir EDWARD CARSON: That one of the 15th January is put in twice. There is no surprise in the thing. It is put in in the Particulars at page 3, January 15th, 1907, and it is put in in the Amendment.

Mr. Justice DARLING: Before that Order was made?

Sir EDWARD CARSON: Yes, my Lord. It is true it is put in under another paragraph under: "The revival of the Cult of the Swaraj."

Sir JOHN SIMON: As far as I have been able to see up to this moment, it has never been relied upon for this purpose, and this is the reason why, when I opened to the Jury, I observed to them that I had been at some pains to search through the Particulars delivered, and I was wholly unable to find anything which justified that allegation. If my friend says he wishes me now to understand that he relies on that, your Lordship will say whether he is at liberty to do so.

Mr. Justice DARLING: He has put it in his first Particulars before ever you got that Order made, which you have just read.

Sir JOHN SIMON: Under the heading of "Swaraj."

Mr. Justice DARLING: It puts it as the "Kesari," 15th January, 1907.

Sir JOHN SIMON: If your Lordship looks to see what that is in the Particulars——

Mr. Justice DARLING: I know, but really there can be no surprise about it. The thing is referred to. It does not say: "I shall rely upon it in order to justify what is said about the lash."

Sir JOHN SIMON: If your Lordsbip thinks so, I will say no more.

Mr. Justice DARLING: Yes.

Sir JOHN SIMON: Very well, my Lord, I accept that.

Mr. Justice DARLING: What astonishes me, I must say, as attention is called to it, is the terms of this Order to give "The names of persons who subscribed 'from

fear of the lash' of the amounts subscribed by each of them respectively and the dates of the subscription."

Sir EDWARD CARSON: I think my friend is even technically wrong in taking this technical point.

Mr. Justice DARLING: He withdraws the objection. I should not allow it, of course, unless I thought that the Plaintiff was prejudiced by it.

Sir JOHN SIMON: Of course, I quite accept your Lordship's ruling: not only do I accept it, but I quite understand, and, with great respect, would accept the view that there is no prejudice involved in the way of surprise in bringing it in now. I quite recognise that. My reason for intervening is that it was not, as far as I could see at the moment, in the Particulars, and that is the reason I made the observation.

Sir EDWARD CARSON: It is really in the Particulars.

Sir JOHN SIMON: At any rate, I need not trouble about it.

Sir EDWARD CARSON: Now, Gentlemen, I was just saying that we would give you evidence of dacoits having committed robberies, and in their confessions they say that it was for the purpose of Swaraj. We are not saying that Mr. Tilak put the money into his pocket, but we say that his gymnastic societies sometimes resolved themselves into juvenile bands of dacoits to swell the coffers of Swaraj. You remember I put to him one paragraph in the Particulars. At page 810, just before the paragraph that has been referred to: "A big sensational Swadeshi case is reported from Senhati, one of the most advanced villages in East Bengal. Some boys, including a graduate of the University, are implicated in this case. Some anti-Swadeshi shop-keepers lodged information at the Khulna Police Station that several young men of the village had looted their shops, thrown away a large quantity of Liverpool salt, burnt *belati* cloths of considerable value, and assaulted them, because they would not give up selling them in spite of their earnest appeal. The Superintendent of Police investigated the case in person and sent up one Akshoy Kumar Sen, aged about 12 years, under Section 380 and 148, Indian Penal Code.

The date for the hearing was fixed for yesterday when another boy by name Surendra Nath Roy, also surrendered himself to the officiating magistrate." Gentlemen, that demonstrates to you what the result of this teaching was. There is not a line of this which is not absolutely true. Now, Gentlemen, I think I have gone through an outline of the whole of this. I have read as little to you as it was possible for me to do because you have listened to me and followed me with great patience.

Mr. Justice DARLING: I do not suppose everybody understands it, but it is said here: "just as his gymnastic societies sometimes resolved themselves into juvenile bands of dacoits to swell the coffers of the Swaraj." I have a kind of notion that the person himself who committed the robbery is a dacoit?

Sir EDWARD CARSON: Yes, my Lord. A dacoity is a robbery.

Mr. Justice DARLING: It would read better if it were "juvenile bands of dacoits who committed dacoities." It is equivalent to juvenile brigands or what they call in this country "hooligans"—what they call in Italy "brigands." You see, Gentlemen, what that which was read to you says. It is from the Indian "News and Notes": "A big sensational Swadeshi case is reported from Senhati, one of the most advanced villages in East Bengal." We know what "advanced" means. "Some boys including a graduate of the University are implicated in this case. Some anti-Swadeshi shopkeepers lodged information at the Khulna Police Station that several young men of the village had looted their shops. thrown away a large quantity of Liverpool salt"—that is what the Swadeshi objects to—"burnt *belati* cloths of considerable value and assaulted them because they would not give up selling them in spite of their earnest appeal. The Superintendent of Police investigated the case in person and sent up one Akshoy Kumar Sen, aged about 12 years, under Section 380 and 148 Indian Penal Code. The date of the hearing was fixed for yesterday, when another boy, by name Surendra Nath Roy, also surrendered himself to the officiating magistrate. The trial is proceeding."

Sir EDWARD CARSON: Gentlemen, I think I

ought probably in this context now to read to you the confession of one of these dacoities, at page 392 of volume 4. It is the 28th April, 1910: Lakshman Dandekar, 18 or 19 years of age, a Brahmin resident at Nasik; then he says this: "That he took an oath of a secret society. Q. How many days since you took the oath? About 1¼ years. The objects of the secret society were to obtain independence for the country and to collect people, to collect money, to collect weapons for that purpose, and to take all possible trouble to gain these things. I did not know who were concerned in the secret conspiracy. After I took the oath with a view to assisting the society with money I stole a gold neck ornament belonging to a sub-overseer named Joshi who was living in my house as my tenant and I handed it over to Ganu Vardya."

Mr. Justice DARLING: His answer is worth looking at. If you look at the beginning he says he makes the statement voluntarily, then he tells how he took an oath. He took the oath one and a quarter years ago, then he says: "The objects of the secret society were to obtain independence for the country, and to collect people, to collect money, to collect weapons, for that purpose and to take all possible trouble to gain these things." Then he stole a gold neck ornament belonging to an overseer and handed it over to Ganu Vardya. Is Ganu the same as Guru, does it mean a teacher or is it a name?

Sir EDWARD CARSON: It was one of those who convicted him, my Lord; I think it is mentioned somewhere in the Judgment. The other is at page 397.

Sir JOHN SIMON: I must take an objection to that, if your Lordship pleases. I submit that my learned friend will not be entitled to use this material in evidence in this case, and that being so, that it should not be opened to the Jury. If I follow rightly, what is happening now is this: Mr. Tilak was asked in cross-examination whether he knew of this man who was supposed to have made this confession. I think the name was mentioned to him, and he said No, he did not. It is now sought to read to the Jury, with a view, I suppose, to its being put in evidence here against the Plaintiff, this alleged confession, and I will assume, I think it is the fact, that

as far as the document is concerned it is a document which has been exhibited for what it may be worth in the taking of evidence out in India. Of course that was quite proper at the moment, because the time to take objection is not when the document is exhibited: the Commissioner has no power either to accept or reject, he simply has to mark the documents, and they come to the Court here. How is an alleged statement made by this person who, as far as I know, is still alive, evidence against Mr. Tilak, or evidence in support of what is here sought to be justified? What is sought to be justified is that his gymnastic societies sometimes resolved themselves into juvenile bands of dacoits to swell the coffers of Swaraj. I submit a document, written down, I suppose by a magistrate, which purports to be, and may be the confession of a boy who is not shown to be any connection of Mr. Tilak's gymnastic societies, whom Mr. Tilak does not know, and whose evidence he has never read, cannot be evidence which is introduced between the parties in this trial. If it were so, my Lord, you will see the well-known rule that when a witness is cross-examined, and answers that he does not know a thing, his answer must be accepted, is completely wiped away, and I do not follow at the present moment on what principle it is sought to bring this in as part, I suppose of the Particulars of Justification for what is here complained of. That is my submission to your Lordship.

Sir EDWARD CARSON: I will tell your Lordship very briefly how I think it is clearly admissible. The statement is, my Lord, "his gymnastic societies sometimes resolved themselves into juvenile band of dacoits to swell the coffers of Swaraj." It will be for the Jury to say, having regard to the evidence, and his teachings which we have proved to the young students in the holding of these meetings, whether it is to do with Mr. Tilak. But, my Lord, if I show the teaching of this gentleman, and then I show that there were these juvenile bands of dacoits, and we have evidence of their being sentenced—not merely convicted. I submit that is a matter which Sir Valentine Chirol had a perfect right to consider in relation to the comment on the results of the teaching and everything else. I submit to your Lordship

I cannot be bound by the statement as showing whether he was brought into contact with these actual individuals. In all these cases of conspiracy, or working for the same ends, even if they were tried jointly for conspiracy, when you show they were working for the same object you can give evidence that they produced a conspiracy in that way.

Mr. Justice DARLING: I should like to ask Sir John Simon this. I am not quite sure I accurately took his objection. Is your objection, or a portion of it, that this is an exhibit put in in the course of the examination of a witness on Commission?

Sir JOHN SIMON: I am not saying, of course, that would be a valid objection; if now the document is here, it is admissible in evidence.

Mr. Justice DARLING: We should want to have first of all the evidence of the person taken on Commission in which this was produced. I suppose it is here, Sir Edward?

Sir EDWARD CARSON: Yes, my Lord.

Mr. Justice DARLING: This is Exhibit No. 392. Who was giving evidence when this was produced as an exhibit?

Sir EDWARD CARSON: My Lord, it was given in evidence by a Mr. Guider.

Mr. Justice DARLING: Now, Sir John, as I understand you do not object to this deposition of Mr. Guider that that is not evidence in this case, do you?

Sir JOHN SIMON: I have not yet any occasion, because no one has attempted to tender it. I do not take objection to evidence until somebody seeks to offer it. The fact that evidence has been taken before a Commissioner in India does not itself make anything tendered in evidence here.

Mr. Justice DARLING: Was it taken on Commission issued in this case?

Sir EDWARD CARSON: Yes, my Lord.

Mr. Justice DARLING: If it is tendered, it is admissible, of course.

Sir JOHN SIMON: Not necessarily, with respect.

Sir EDWARD CARSON: Would not the easiest way be I should say no more at present, my Lord; perhaps it

will be easier if my friend thinks I ought not to mention it now.

Sir JOHN SIMON: My friend is very fair; if I was right, it would be inconvenient that it should be dealt with in opening..

Sir EDWARD CARSON: Something may depend on Sir Valentine Chirol's evidence.

Sir JOHN SIMON: I am much obliged. My friend is entirely reasonable. For the time being it will not be taken that the exhibit my learned friend was reading was in at all, or before the Jury.

Mr. Justice DARLING: No.

Sir EDWARD CARSON: I think, Gentlemen of the Jury, that is all at the moment I have to say. I suppose I shall have to address you again later on, but I submit that we have shown a very very clear case, not a case in which it is possible for Mr. Tilak to succeed or to get damages. Of course, Gentlemen, you will understand it has not been an easy matter, after all these years, to produce all these documents and all this evidence before you. The book was written in 1910, it was not challenged till 1915; it was then challenged, not in India, but here, as I said before, with the result that Sir Valentine Chirol had to go out to India again and survey the whole of the material upon which he had written his articles, he having in the meantime, not unnaturally, destroyed his notes. It had all to be collected again. Then we had to get an Order here to send out a Commission to India to take the evidence of the various people who were able to prove all these documents on which we rely; that also was a matter of great magnitude, having regard to the distance. Gentlemen, I say here now that in doing all this, and incurring all this expense over these years, all this labour, that Sir Valentine Chirol has, he has done it with one object, and one object alone, and that is a public object, because it would mean, if he were for one moment to shirk what he knew and believed to be the truth as regards Mr. Tilak and Mr. Tilak's conspiracies he would have been doing an improper thing, setting him up in India with all the more vigour than ever he had to carry on his propaganda for the purposes I have indicated. Of course, his hope is that in this case, in some way or another, he

ıy get some sort of a verdict from you and go back and say he has the endorsement of a British jury for what he has been doing in his anti-British propaganda all these years. I leave the case there till you have heard our evidence, and I leave it with considerable confidence.

Sir VALENTINE CHIROL, sworn.

Examined by Mr. EUSTACE HILLS.

2586. Sir Valentine Chirol, you are one of the Defendants in the action, and I think until 1912 you were a director of the Imperial and Foreign Department of "The Times" newspaper?—Yes.

2587. I think in 1912 you retired?— Yes.

2588. And I think a little time after that you were appointed a member of the Royal Commission on Indian Public Services?— Yes, about six months after I retired I was asked by the then Secretary of State, Lord Crewe, to become a member of the Royal Commission appointed to inquire into the Indian Public Services. He pressed me to undertake it on account of my great interest and great experience I had acquired in Indian affairs. I served on that Commission three years.

2589. I think at the present moment you are attached to the British Delegation at the Paris Peace Conference?— Yes, I am. I should like, if I may, to take this opportunity of correcting an inaccuracy in "The Times" report which understood Sir Edward Carson to have said the other day that I was appointed on account of my experience in Indian questions. That is not quite correct; I am attached to the General Political Intelligence Department of the British Delegation of the Peace Conference, and not particularly in connection with Indian questions, though Indian questions may arise.

2590. What I want to come to, Sir Valentine, is this. I think you have spent in earlier years a good many years of your life in foreign travel?— Yes, I spent a great many years travelling.

2591. I think in 1892 you were "Times" correspondent at Berlin?—I was appointed "Times" correspondent at Berlin in 1892, and I was there about five years.

2592. That carries us—just to let the jury know what your experience has been—up to 1897. Then, I think, you succeeded Sir Donald Mackenzie Ross as the director of

the Imperial and Foreign Department of "The Times" newspaper?—Yes, and I took up that post after having been five years in Berlin——

Mr. Justice DARLING: Would you answer the questions shortly.

2593. Mr. EUSTACE HILLS: Then, I think, after that, in 1902 or 1903 you travelled through Persia to India?—Yes.

2594. And, I think, you went there again in 1905 and 1906?—Yes.

2595. Did you have occasion during both those visits to watch the political situation in India?—Yes.

2596. And did you have opportunities, amongst other things, of watching the measures of the party which has been called in this action the "Extreme" Party?—Yes.

2597. Did you form an opinion as to that movement and its tendencies?—I did.

2598. I think during the following years, in 1908, and 1909, you were in London?—Most of the time.

2599. Up to a certain period in 1909?—Yes.

2600. Did you whilst in London continue to follow the movement of politics in India?—Yes, it was a part of my duty.

2601. During 1908 I think you had occasion to go to other portions of the East, and Eastern Europe?—Yes.

2602. I think that towards the end of 1909 you returned once again to India?—I actually left at the beginning of 1910; I decided to go at the end of 1909.

2603. If you please. For what purpose was it that you then went to India?—In order to study the international situation there, and the growth of what was called Indian unrest.

2604. Did you in the course of that visit to India visit a large number of towns and capitals in India?—Yes, I visited most of the chief centres.

2605. May I take it, only referring to those that more particularly concern us to-day, amongst others you went to Poona, to Bombay, to Nasik, to Nagpur, and Kolahpur?—I did.

2606. Whilst you were at those different towns did you seek information as to this particular agitation which you have mentioned?—I sought information from all

quarters.

2607. When you say from all quarters, may I take it you sought it both from one side and the other of politics? —Representatives of the different schools of politics.

2608. If you please. In the course of that did you see members of National Party, and different political parties, not only of one?—Not only of one.

2609. Did you in the course of that visit devote special attention to the political situation in the Deccan? —Yes, special attention.

2610. Will you tell us shortly why you say you gave special attention to the Deccan?—I gave special attention to the Deccan because it had been the centre for many years past of a strong agitation and violent propaganda against British Government and against British influence and against Western influence in India, and it had been the scene of some terrible murders, and notably, just before I went out to India, the murder of Mr. Jackson at Nasik which was the culminating point.

2611. Did you form any conclusion as to the cause or originator of those violent propaganda?—I formed the same conclusion as the Judge—

2612. Just tell us in your own words whether you formed any conclusion?—I formed the conclusion that Mr. Tilak——

Mr. SPENCE: We cannot have what conclusion this gentleman formed. That is not evidence; that is his opinion, and we want facts.

Mr. Justice DARLING: He not only formed that conclusion, but I gather he printed it.

2613. Mr. EUSTACE HILLS: Taking it shortly, did you form a conclusion which has appeared in the book of which Sir Edward Carson has been reading certain extracts?—Yes, that is so.

2614. You told me I think that one of the places you visited was Nasik?—Yes, that is so.

2615. In view of your inquiries as to this political agitation, did you become acquainted with any materials at Nasik?—Yes.

2616. Just tell my Lord and the Jury what those were?—I became acquainted with many of the confessions and depositions that had been made in the course of the

investigation then being conducted in connection with the murder of Mr. Jackson, and I became acquainted with a large number of books, portraits and pamphlets seized when searches were made in the houses of the prisoners and persons connected with the murder of Mr. Jackson or with the conspiracy of which the murder of Mr. Jackson was one of the incidents. There was a great deal of material which was put in as exhibits in the conspiracy cases. Among the things seized in the houses of the prisoners or amongst other effects were portraits of Mr. Tilak, poems in honour of Mr. Tilak, odes to Mr. Tilak, protestations of devotion to Mr. Tilak——

Mr. SPENCE: Does this gentleman produce them?

Mr. EUSTACE HILLS: I think they are produced.

Mr. Justice DARLING: What would you like first, one of the portraits?

Mr. EUSTACE HILLS: The portraits are in one of the volumes.

Mr. Justice DARLING: If you will tell Mr. Spence where they are you need not produce them unless you think it absolutely necessary.

2617. Mr. EUSTACE HILLS: They found them in the houses of the people involved in the conspiracy?—Yes.

Mr. SPENCE: The witness does not say he found them. If they are put in by persons who identify them it is another matter.

Sir EDWARD CARSON: He has a right to say what he saw.

Mr. DARLING: He went to Nasik and he says he saw these things which had been found in the houses.

Mr. SPENCE: He is stating they were found in the houses. It must be a question of hearsay.

Mr. Justice DARLING: The point is, that we must have put forward the person who found them.

Mr. SPENCE: If they are going to use them.

Mr. Justice DARLING: If I had known that was the way the case was going to be conducted, I would have seen that a younger Judge had began it.

Mr. EUSTACE HILLS: It will not be so onerous as it seems. I think we shall find the people who found

them are called.

Mr. Justice DARLING: It will last out my remaining years.

2618. Mr. EUSTACE HILLS: You have told us of some of the documents with which you became acquainted in the course of your visit to Nasik. Did you also make yourself acquainted with articles and extracts from the Plaintiff's papers?—A very large number.

2619. Did you also make yourself acquainted with extracts from the newspaper which is being referred to called the "Kal"?—Yes.

2620. Did you put the conclusions at which you arrived during your visit to India into a series of letters to "The Times"?—Yes. I wrote a series of letters in "The Times."

2621. Did they appear from time to time?—I wrote nothing while in India; I simply collected my materials and when I returned I wrote the articles which appeared in quick succession in "The Times" in July, August and September, 1910.

2622. Then I think those articles having appeared in "The Times" later they were expanded and published in the form of this book, passages from which have been considered in this case?—Yes.

2623. I think the book was dedicated to Lord Morley?—By Lord Morley's permission.

2624. Mr. Justice DARLING: When he gave you permission to dedicate the book to him he had had the opportunity of reading the letters, because they had appeared in "The Times," is that so?—Yes, my Lord.

2625. "Dedicated by permission to Lord Morley." Was he then Secretary of State for India?—When he gave me permission to dedicate the volume to him he was still Secretary of State; he actually resigned, as will be seen in a page at the end, when the book was just going to the Press. On the last page, my Lord, you will see a reference to it.

2626. Mr. Justice DARLING: "The retirement of Lord Morley has been announced just as these last pages are going to press. The announcement has been received with genuine and widespread regret at home, where criticism of certain details and aspects of his

administration has never detracted from a genuine recognition of the lofty sense of duty and broad and courageous statesmanship which he has displayed throughout a very critical period in the history of our Indian Empire. It will assuredly be received with the same feeling in India by all those who have at heart the destinies of the British Raj and the interests of the countless peoples committed to our charge. Lord Morley's tenure of office will remain for all times memorable in Anglo-Indian annals," and so on. He was not a reactionary, was he?—He is not generally considered so, my Lord.

2627. Mr. EUSTACE HILLS: During the whole time your letters were appearing in "The Times" and up to the end of the book being prepared Lord Morley was Secretary of State for India and retired just as the book was going to Press?—Yes.

2628. Was an introduction to the book written by Sir Alfred Lyall?—By Sir Alfred Lyall, the author of "Asiatic Studies," one of the greatest students on Indian affairs; he was Lieutenant-Governor of the North-West Provinces.

2629. Mr. Justice DARLING: He spent his whole life in India, I think?—Practically, my Lord. I think he was recognised as the greatest authority on Indian thought and character.

2630. Mr. EUSTACE HILLS: In the course of your last visit to India and the investigation you were making did you collect a large amount of material in the shape of notes?—Yes, I brought home that material, upon which I worked as soon as I got back to England.

2631. Are they in existence now?—No, they are not.

2632. What happened to them?—In 1912 when I retired from active journalism and moved from one house to another I took the opportunity of destroying a large number of papers which I had collected together and which it seemed to me I should never require again, and amongst them the papers connected with this book which had appeared nearly two years before, and had never been challenged.

2633. Has your book been translated into the vernacular?—Yes, it was translated into the vernacular, into

Mr. Tilak's own language, Mahratti, at Kolhapur, in his own country but he has never brought in my knowledge any action for libel against the translator in his own country.

2634. With regard to Mr. Tilak himself, we know that of necessity you could not have seen him when you were in India in 1910?—No.

2635. Had you in fact ever seen him before this trial?—I had not seen him to my knowledge. I had never seen him in my life until we met in Bombay in the High Court of Judicature on the evidence being taken on Commission, under Letters of Articles from the Lord Chief Justice of England for the purposes of this case.

2636. In what we may call the earlier stages of this trial?—Yes.

2637. Until the letter that Sir Edward Carson has referred to of I think October 1st, 1915, five years after the book was published, was any complaint made to you about the publication of the book?—None. Mr. Tilak referred to the book in a speech or a letter immediately after his release in 1914, and said that it misinterpreted his views, but there was never any mention that there was anything libellous on that occasion. That was a year before the Writ was issued.

2638. That was the letter that has been read of the 30th August, 1914?—Yes.

Mr. Justice DARLING: That was a sort of manifesto?

Mr. EUSTACE HILLS: That was a sort of manifesto when he came back from Mandalay.

2639. Was it not until more than a year afterwards that complaint was made as to the book?—It was more than one year afterwards that complaint was made.

2640. I must ask you; though you have found yourself compelled in your book to criticise the doctrines and methods of the Plaintiff somewhat severely, have you any personal animosity against him of any kind whatever?—None whatever, no personal animosity of any kind.

2641. And in the passages, both those that have been read by Sir Edward Carson that were not complained of, and in the passages which have been picked out which

are complained of, have you relied upon information you obtained from the people you saw or the doctrines you became acquainted with, and from the extracts and articles in the Plaintiff's papers, and in the other paper, the "Kal"?—Yes.

2642. Is it because of that that you feel bound to take up the position that Sir Edward Carson intimated that you are unable to withdraw anything of what you said?—Yes, it is.

(Adjourned for a short time.)

Cross-examined by Sir JOHN SIMON.

2643. Sir Valentine, what was the date when your articles appeared in "The Times" newspaper?—July, August, and September, 1910, I think.

2644. And then as we see this book of yours "Indian Unrest" is published later in the same year?—Later in the same year.

2645. A reprint revised and enlarged from "The Times"?—Yes.

2646. Did you make some changes in the articles as they appeared in "The Times" before they appeared in your book?—I made certain alterations, I think mostly verbal alterations. Of course I introduced into the book a great deal of material for which space was not allowed me in my articles in "The Times".

2647. I follow that?—I occasionally had to modify passages in order to get the proper sequence.

2648. I did not mean that. I meant so far as regards the material which had already appeared in "The Times" newspaper, save for the purpose of adjusting it to a larger treatise, did you make any further alterations in the articles?—I think the only what I may regard as material alteration I made was the passage relating to the Tai Maharaj case.

2649. I will come to that. Subject to that, substantially the book reproduces as far as it goes what one would see in "The Times"?—There was a great deal more appeared in the book.

2650. I say as far as it goes?—Yes.

2651. Before writing the articles in "The Times" and subsequently producing the book, when was it that you left India?—As far as I remember about June.

2652. The same year, June, 1910?—Yes.

2653. How long had you been in India, leaving it, as you told us, in June, 1910, on that visit?—About five or five and a-half months. I think—five to six months.

2654. Like some other occasional visitors to India, you avoided, naturally and properly, the worst part of the year?—I beg your pardon. The worst part of the year in India is March, April, and May. That is the hot season in India, and that is what is considered the worst part. I was there during that part.

2655. I was speaking about what I had read about Mr. Paget, M.P. I was misled——

Mr. Justice DARLING: Sir Valentine is not an M.P.

Sir JOHN SIMON: No, my Lord.

Mr. Justice DARLING: He stayed longer.

2656. Sir JOHN SIMON: Was it on that visit that you collected the materials on which your articles and book were for the most part based?—They were based very largely upon materials obtained during that visit, but also on knowledge I had acquired in India on previous visits, and on the information that reached me constantly from India as director of the Foreign and Imperial Department of "The Times," where India was one of the countries I had constantly to deal with.

2657. Was it on that visit that, amongst other places, you stayed at Kolhapur?—It was.

2658. Kolhapur is one of the native States, is it not?—Yes, it is one of the States that are not under direct British administration, but enjoys a large measure of authority under their hereditary rulers subject to the supreme Government of India.

2659. Is the hereditary ruler the Maharajah of Kolhapur?—Yes.

2660. Did you stay with him?—No.

2661. You stayed in Kolhapur?—Yes, but not with the Maharajah.

2662. Did you see him or his officials?—I did see him once or twice during my visit. I should never go to a native State without presenting my compliments to the ruler of the State.

2663. I only want you to tell the Jury, and I am sure you will quite frankly do so, as I want the Jury to get

a correct answer from you, did you get some of your materials from Kolhapur ?—During my stay at Kolhapur I got some of the materials which I have used in my book. There is a chapter devoted to Kolhapur.

2664. I dare say you remember the two rival proteges of the Maharajah of Kolhapur, Jagganath and Bala. Bala was a protege of the Maharajah of Kolhapur ? —I think he was.

2665. And I have no doubt that the Maharajah of Kolhapur was by no means on friendly terms with Mr. Tilak ?—I know Mr. Tilak has violently attacked the Maharajah of Kolhapur and the administration of Kolhapur not in connection with the Tai Maharaj case, but in connection with the general propaganda.

2666. I think you will find it a convenient course, if I may suggest it to you that, as far as possible you should answer the question I put, and if the question is not clear will you tell me, and I will try and make it more clear. I will put the question again. Is it within your knowledge that the Maharajah of Kolhapur and Mr. Tilak are not on friendly terms ?—I believe that is so. I cannot swear it.

2667. I do not ask that. Now, with regard to the additions which you made in this book "Indian Unrest" after the articles in "The Times" had been published, but before the book was published about the Tai Maharaj case, the note and so on, where did you get that information from ? Just think a moment ?—The information came to me in letters that I received from India and in reports of the Judgment delivered by Mr. Justice Chandavarkar.

2668. Do I understand you, Sir Valentine, that when you wrote what the Jury have before them on page 340 of this book, that you had before you the Judgment of Mr. Justice Chandavarkar ?—A report of the Judgment.

2669. Could you identify it for me ? I should like to see it. In what form was this report that you had. Was it in a letter ?—I cannot swear at this distance of time in what form it came before me. It came before me in my capacity as foreign editor of "The Times". That piece of news that came to me——

2670. I am not asking you in what capacity it

came before you. Will you please attend to the question?——

Sir EDWARD CARSON: You asked him where he got it and how he got it.

2671. Mr. Justice DARLING: He asked him if he could refer him to it, and the witness said it came before him in his capacity as foreign editor of "The Times"?—It came to me in my capacity as foreign editor of "The Times" as a piece of news.

2672. Sir JOHN SIMON: That is not quite what I intended to ask you. I will repeat my question. Can you tell the Jury not in what capacity you received it, but what sort of thing it was that came to you? Was it printed, or was it in a letter, or what was it?—I am not prepared at this distance of time to say in what exact form it came before me. It is nearly nine years ago.

2673. I will just help you about the date. You are perfectly right when you say the article appeared in "The Times" in July, 1910. I have a copy of the article of the 27th July, 1910, before me. I notice that at that time the language that you used about the Tai Maharaj decision was this, if you will turn to page 49. At the bottom of page 49 comes this passage: "For three or four years the Tai Maharaj case, in which, as executor of one of his friends, Shri Baba Maharaj, a Sirdar of Poona, Tilak was attacked by the widow and indicted on a charge of forgery, perjury and corruption, absorbed a great deal of his time." So far I notice that the article in "The Times" and the passage in the book are the same?—I have not the article.

2674. You will take it from me. I am reading it. Then it goes on in "The Times" in this way: "But his final acquittal after long and wearisome proceedings was greeted as another triumph for him, and, not unnaturally one of much sympathy even amongst those who are politically opposed to him." You will take it, I am sure, that I have just read word for word what is in the article in "The Times" of the 27th July, 1910. So the insertion of these words in the book, "though as recent developments have shown quite prematurely," the little reference to the note is an insertion that is made after the article in "The Times" has appeared?—Yes.

Mr. Justice DARLING: The main difference is the word "prematurely".

2675. Sir JOHN SIMON: Do you know now that in fact Mr. Tilak was never indicted on any charge of forgery?—Was never indicted?

2676. Let me repeat my question: I want you to follow it. Do you know now that Mr. Tilak was never indicted on any charge of forgery?—Charges of forgery perjury and corruption were brought against him.

2677. I am reading your words in which you say he was indicted on a charge of forgery. What I want you to tell the Jury is, do you not know now that he was never indicted on any charge of forgery whatever. Cannot you answer?—He was not indicted on a charge of forgery?

2678. Do you know now that he was never indicted on any charge of corruption. Will you answer, please. Do you know that?——

2679. Mr. Justice DARLING: The point is "indicted." Do you realise exactly what the point is about being indicted on a charge?—It has a technical meaning?

2680. Yes. You said "charges of forgery, perjury and corruption were made against him," but the question you are being asked is, were the words in the book indicted on charges of forgery, perjury and corruption." Do you understand what that means to a lawyer? Are you a lawyer?—No, I am not.

Sir JOHN SIMON: I am not quite sure whether I am to take it now that the question has been answered, so may I put it again?

Mr. Justice DARLING: I interposed because I thought the witness was not answering because he did not appreciate the question. You asked him about being indicted and asked him if charges of forgery, perjury and corruption were made against Mr. Tilak.

2681. Sir JOHN SIMON: I am not accusing you, Sir Valentine, of being a lawyer, but I am only inquiring how accurately you thought your book was written. When you say a man has been indicted of charges I suppose you mean, in plain English, he has been put on his trial for them?—No, not necessarily.

2682. Just suppose for a moment that to ordinary people, not lawyers, that is what it means. Do you know now that it is quite untrue to say that Mr. Tilak was indicted on his trial on any charge of perjury?—It may be technically inaccurate.

2683. It is a terminological inexactitude——

Mr. Justice DARLING: That is exactly what Mr. Paget, M. P., was accused of.

Sir JOHN SIMON: No, my Lord, I think it was somebody else.

Sir EDWARD CARSON: It depends on exactly what did happen.

2684. Sir JOHN SIMON: Quite. In the same way I am going to ask you whether I understand what it was you were trying to say. I am not in the least trying to catch you. In the same way you know now quite well that it was not accurate to say he had been indicted or put on his trial for any charge of corruption? Do answer. You know that?—Yes, he was not put on his trial.

2685. What happened was this, was it not, that somebody or other—some official, I think—proposed that he should be accused of these crimes, but that the authorities declined to put him on his trial for them. That is what happened?—Yes.

2686. Treating the Plaintiff, as I am sure you expected him to be treated, in the same way as anybody else. You see the difference, do you not?—I think there is some difference—some technical difference.

2687. Now I go to the addition which you made which altered that. You did put in "though as recent developments have shown, quite prematurely"? You added that, did you not, when you were in England and revising "Times" articles?—Yes.

2688. Do you realise, now that you understand what I am asking you about, that it would not be true to say of Mr. Tilak that his acquittal on the charge of perjury was in any way reversed or varied or affected by what subsequently happened?—I say that the sympathy that he obtained was premature in the light of Mr. Justice Chandavarkar's Judgment.

2689. Let me put it to you again. I want to know

what your present state of mind is. As you realise now, here in Court in 1919, do you not understand now perfectly well, whatever was decided by Mr. Justice Chandavarkar, that Mr. Tilak's acquittal for perjury was not affected in the least?—By what?

2690. By Mr. Chandavarkar's decision?—According to the Judgment of the Privy Council. May I have that passage of the Judgment?

2691. I suppose this is in the course of answering the question? My question is quite an easy one which is capable of being answered by "yes" or "no," but do as you will?—Will you repeat the question?

2692. I am most anxious to convey to you what I think is a very plain question. Let us try again. I am sure you will answer it quite straightforwardly, if you can. I am asking you whether you now realise that the acquittal of Mr. Tilak for perjury was in no degree varied or affected by Mr. Justice Chandavarkar's Judgment. Do you understand it now?—Yes, and I say that it was not affected.

2693. You understand now?—Yes.

Mr. Justice DARLING: You have puzzled me now, because you said "his acquittal of perjury." I thought we had arrived at this, that he was never indicted for perjury. If he was not indicted for it, he could not be acquitted.

Sir JOHN SIMON: I am sure we should have arrived at that, because as far as I am concerned, from the first moment of this case, I have always stated that he was indicted for perjury. The thing he was not indicted for were two other quite separate offences, one forgery and the other corruption.

Mr. Justice DARLING: He was indicted for perjury but not for forgery or corruption, so that he was not acquitted of forgery and corruption because he was not indicted for them, but he was acquitted of perjury?

2694. Sir JOHN SIMON: Yes, that is quite right, my Lord. It really is not very complicated. (To the Witness): It stands like this: he never was put on his trial on any criminal charge in this connection except perjury. He was first convicted of perjury and subsequently in a higher Court of Appeal that conviction was

quashed and he was declared "Not guilty." What I am asking you is nothing that happened after that, as you now understand quite well, affected the fact that he was acquitted of perjury?—But Mr. Justice Chandavarkar's Judgment undoubtedly did affect that.

2695. But if you would imagine that it was yourself complaining of libel, perhaps you would follow it more easily. If you had been put in the dock at the Old Bailey and charged for perjury—if you will excuse me suggesting such a thing—and had been acquitted, do you not think you would attach great importance to whether or not it would be true to say that your acquittal stood or had been reversed?—Yes.

2696. You probably will not complain that other people feel the same?—No.

2697. I put it to you once again, you know quite well now, do you not, that the acquittal on this criminal charge stood and was not altered or varied by anything Mr. Justice Chandavarkar said?—I say it was affected by what Mr. Justice Chandavarkar said.

2698. And holding that view, I want to understand when you wrote this book did you realise that as a matter of fact Mr. Tilak's acquittal stood, or did you think that Mr. Justice Chandavarkar had altered it in some way?—Mr. Justice Chandavarkar's judgment had affected the question of Mr. Tilak having, or not having committed perjury.

2699. I may take it that it was quite deliberate and not an accident—perfectly deliberate when you altered what you had written in "The Times" and put it in a different form in the book?—As to the sympathy having been premature.

2700. And you referred the interested reader to the note marked "5," where one sees what you set out for. Cannot you give me some idea of what the materials were on which you arrived at that conclusion? You say you received them in your capacity as a distinguished gentleman connected with "The Times." What materials were they? Did you get a letter?—I cannot swear at this distance of time what was the exact material. The material was the report of the Judgment of Mr. Justice Chandavarkar.

2701. Since you came back from India in May or June, 1910, have you heard directly or indirectly from the Maharajah of Kolhapur?—I write to him from time to time.

2702. And he writes to you from time to time?—Yes.

2703. You told me that he was a gentleman who took such an interest in the Tai Maharaj case?—I did not tell you so.

Sir EDWARD CARSON: No, he did not say so.

2704. Sir JOHN SIMON: I thought you told me that Bala was his protege?—You asked me whether Bala was his protege, and I said I believed he was.

2705. Do you not know quite well that the Maharajah of Kolhapur, whose protege was one of the two candidates in the Tai Maharaj case, takes an interest in that matter?—I never heard anything from the Maharajah of Kolhapur as to what his interest is in the Tai Maharaj case, and I have had no conversation with the Maharajah of Kolhapur on that question.

2706. Have you got here the letters you have had from the Maharajah of Kolhapur?—No.

2707. Are they in existence?—I doubt it.

2708. They may be?—They may be.

2709. May I take it then you will be kind enough to search and let me have the opportunity of asking about them if you find them?—Yes. May I say that my letters from the Maharajah of Kolhapur are merely formal letters of friendhip and expressions of sympathy with me in this case.

2710. Mr. Justice DARLING: As far as you recollect, did any one of them deal with Tai Maharaj case?—None, my Lord.

2711. Sir JOHN SIMON: As I follow, you are not able to charge your memory even to make suggestions as to from what source it was that you got the information which led you to make the alterations in this book?—As far as I can charge my memory, it was from sources of public information.

2712. That is all you can tell us about it?—Yes.

2713. I pass from that subject and ask you about another thing now. You will forgive me asking, it is not intended impertinently, do you amongst your accomplish-

ments read or understand Mahratti?—No.

2714. Of course, you would be quite unable yourself, as other persons would in this Court, to read the "Kesari"?—Quite.

2715. It is not intended as a reflection on your accomplishments, but just as a matter of fact. This information will be within your cognisance: You know, of course, that the Bengalis do not read Mahratti any more than you or I?—I know that they do not read Mahratti.

2716. Then down to the time that you left India about midsummer, 1910, had you ever employed anybody to translate the "Kesari" for you?—I have not personally employed anybody to translate the "Kesari."

2717. I mean these books with which this case is burdened. The Jury have had copies of them containing extracts from hundreds or, for all I know, thousands of articles, they, of course, have all been translated and prepared since you left India, and in connection with this case?—The actual translations have been prepared for that purpose.

2718. Mr. Justice DARLING: I think the translator generally gives his name?—Yes, they are all translators for the High Court of Bombay.

2719. Sir JOHN SIMON: You will see what I am anxious to get. I want to follow what was the extent of your knowledge of the contents of the "Kesari" when you left India. As I follow, you had had a sight of the proceedings, I mean the records of what had happened in the Tilak prosecutions for sedition?—I had. They were all public documents.

2720. Yes. I want to get the fact. Does that apply to both the 1897 and 1908 prosecutions for sedition?—I had seen the proceedings in both cases.

2721. And those proceedings would include the two or three "Kesari" articles. There may be more than two or three?—A great many more than two or three.

2722. If you please—whatever the number is—not a great many more, a certain number of "Kesari" articles which were in fact exhibited in those cases?—Yes.

2723. We can easily see what the number is. Apart from that had you down to the time you left India ever in

your life read other articles in the "Kesari"?—Read them in the "Kesari"! Of course not. I had seen abstracts of a very large number of translations made of a very large number of articles in the "Kesari."

2724. Who supplied you with them?—Must I answer this question, my Lord?

2725. Mr. Justice DARLING: On what ground do you suggest that you should not?—A number of them were supplied to me by my late friend, Sir William Lee Warner, who had held a high official position in the Bombay Government and was a member of the Council of India at Whitehall, and who had collected a large number of notes. He had been a high official of the Government of Bombay at the time when Mr. Tilak's first campaign was going on, and ever since he had taken a great interest in Mr. Tilak's activities, and followed with great interest his campaign in the Press, and he placed at my disposal a large number of notes that he had of articles in the "Kesari." That was one source.

2726. Sir JOHN SIMON: I will go into more detail if necessary. I want if I can to get a general answer. May I take it that in so far as you had been supplied with extracts from or translations of extracts from the "Kesari," you have been supplied with them from official sources? —It is very difficult to say exactly what are official sources. If you mean that I was supplied with them officially I was not.

2727. I did not mean that. I mean official sources and unofficial sources?—There were extracts from the Indian Press made in all the Provinces, including Bombay, by the local government and by the Government of India

2728. That is what I mean by "official sources." Would there be any objection then. Do you see any inconvenience in answering this question. Now apart from what was exhibited in the two Tilak trials down to the time you left India was your material, as far as it depended on what was in native newspapers, supplied to you from official sources?—Part of it was supplied from official sources in the sense I have indicated, part of it also in the way of quotations from other Indian papers, Anglo-Indian papers published in English, not

necessarily Anglo-Indian, papers published in English—numerous quotations. The Bengal papers, for instance, reproduced translations from Mr. Tilak's papers in English.

Mr. Justice DARLING: To-day you will very likely see what the French newspapers are writing about the Conference translated into English.

2729. Sir JOHN SIMON: Yes, my Lord. I follow that quite. Sir Valentine is quite right to make that addition. Sir Valentine, for the purposes of your serious study, shall I not be right in saying that the most important and valuable material was that which was supplied from official sources?—I should not like to say it was the most valuable. I will say valuable if you like.

2730. I suppose I may take it—correct me if I am wrong—that there are articles from the "Kesari" which have been read in this case—articles I read, for instance, in opening— which you had not before you when you wrote your book? Possibly—probably.

2731. Had you before you, for example, any article of the plague which urged upon the readers of the "Kesari" that strict administration, search of their houses, and so on, was necessary?—I knew that at the beginning Mr. Tilak had written for a short time in that sense.

2732. Or articles explaining to the native readers what the protection from such a disease as this was?—I knew that at the beginning of his campaign he had written in that sense.

2733. Or articles urging that one must not indulge in violence because one felt that the situation was hard, but must keep within the law?—I knew that occasionally Mr. Tilak did write precautionary sentences at that time.

2734. Or articles expressing his confidence that the higher authorities would see that subordinate authorities did not go too far?—I cannot swear that my attention had ever been drawn to that particular point.

2735. Or articles pointing out that in Bombay searches were conducted without the use of soldiers?—Yes, I do know that, because I made inquiries as to the reasons for the difference, which seemed to me satisfactory.

2736. You satisfied yourself, did you not, that the fact was that in Bombay soldiers were not used in that way?—Yes.

2737. Do you remember whether your attention had been called at that time to the article which appeared in the "Kesari" immediately after Mr. Rand's death?—I think I had heard of that article. I have not the article before me. You mean the article in which there are some perfunctory expressions of regret.

2738. I am glad you should have added that, because it shows the way in which you approach these matters. It is the article which I read to the Jury. I think you said you had examined the proceedings at Mr. Tilak's first trial for sedition which was later in the year 1897?—Yes.

2739. Did you observe that at that trial both the prosecution and the Judge expressly and carefully disclaimed any suggestion that Mr. Tilak was responsible for the murder of Mr. Rand?—Yes.

2740. This man Chapekar who was ultimately found to be the murderer, of course was not arrested until later?—He was not found until later?—That is so.

2741. I imagine it is included in your answer. Did you have the opportunity of seeing both of Chapekar's confessions?—I saw Chapekar's confessions.

2742. As far as I know, there are two of them?—Yes.

2743. We mean the same thing?—Yes.

2744. The first confession is, I see, by the documents, October 8th, 1897, and the second is the confession of February 2nd, 1898. Whatever the defects of this confession you may take it that those are the dates?——

2745. Mr. Justice DARLING: What became of Chapekar? Was he executed?—Yes.

2746. Sir JOHN SIMON: He was hanged. The crime was on the 22nd June, 1897, and they could not find this man at first. The first of these confessions, I daresay you notice, was on the 8th October, 1897, the very day on which he was caught?—Will you allow me to refer?

2747. Do. Which book would you sooner refer to: the pink book?—Yes.

2748. Will you turn to page 379? The point I want

to make on the dates is of a little importance——

Sir EDWARD CARSON: I do not know whether my friend has put this in?

Sir JOHN SIMON: I thought both were in?

Mr. Justice DARLING: I have not this marked as being in.

2749. Sir JOHN SIMON: Sir Valentine says he saw them both. The inconvenience, if I may say so, the confusion that arises is partly due to this, which I am afraid is not uncommon in these cases from India: that the documents are not arranged with much regard to order of date, but if Sir Valentine will follow me he will see I am right. The one which begins on page 375 and ends on page 379 is dated the 8th October, 1897?—Yes.

2750. That is the first one. If you will kindly look back for a moment immediately before that there is another confession that begins on page 375, and that is February 2nd, 1898.

Mr. Justice DARLING: In the pink book, the one printed last was made first. That is all.

2751. Sir JOHN SIMON: I do not mean in that volume, but those two confessions as I follow are the two confessions of Chapekar which you saw?—Yes.

2752. I think you will agree with me, it seems to me looking at these books as though it was not a very uncommon thing for a native when he is arrested to make more confessions than one. You will see that more than once in this book?—Two confessions?

Mr. Justice DARLING: They are not contradictory, are they?

Sir JOHN SIMON: We will see in a moment. I think they are.

Mr. Justice DARLING: A man may give a certain amount of detail and then give more.

2753. Sir JOHN SIMON (to the Witness): Perhaps you will take it from me, subject to my showing it, that the first of these in order of date, the one of October the 8th, 1897, was made the very day the man was caught?—Yes.

2754. You will take it from me for the moment?—Yes.

2755. Neither of those confessions ever mentions

the name of Mr. Tilak, does it?—It does not mention the name of Mr. Tilak.

2756. Will you answer the question. Neither of those confessions refers to the "Kesari" or to any newspaper?—Not by name.

2757. Whether by name or not?—To the substance of the things that appeared in the newspapers.

2758 It is a very simple question, and I should have thought it capable of a simple answer. The fact is, is it not, that you were wholly wrong when you wrote in your book that the murderer of Mr. Rand had referred to Mr. Tilak or Mr. Tilak's organs?—Will you please point out where I have said that?

2759. Yes, I will——

Mr. Justice DARLING: I do not know whether there is anything in it, but you call these confessions. One of them is Exhibit 123 and the other is Exhibit 408. They are really examinations—questions and answers.

Sir JOHN SIMON: Yes, my Lord.

Mr. Justice DARLING: Exhibit 123 is "Confession Case 2-98, Examination of the accused Damodar Hari Chapekar before the Sessions Judge. Q. Were you in Poona on the 22nd June last," and so on, and the other one, which is headed: "Confession of Damodar Hari Chapekar," begins: "1-2-98. Q. What is your name?" This is the first of the two. "A. My name is Damodar Hari Chapekar." Then: "I am about to make a statement voluntarily." Then after that there is a good deal of question and answer.

Sir JOHN SIMON: I think, my Lord, I am right that there is no power in India for a prisoner to give evidence on oath. They have not got a thing like our Evidence Act. My understanding of the matter is that these statements are taken, and may in some cases, I believe, be used, because in the view of the person who takes them, they are voluntarily made.

Mr. Justice DARLING: He says in this one which comes second in the book, but is the first one in order of date: "My name is Chapekar. I am about to make a statement voluntarily," and it goes on.

Sir JOHN SIMON: At the end on page 379 the magistrate certified: "I believe that this confession was

voluntarily made."

Mr. Justice DARLING: I had not noticed that.

Sir EDWARD CARSON: What I am told is that before the magistrate, the accused can make a confession. Before the Sessions Judge under the law of India, it is the duty of the Sessions Judge to question the prisoner.

2760. Sir JOHN SIMON: That explains it. (To the Witness): I agree there will not be any dispute between you and me about this, that when I speak about the confessions and you speak about the confessions, we mean these two things?—Yes, we mean those two documents.

2761. Now I should like the Jury to have a plain simple answer if you can manage it, Yes or No, to this question. Is it accurate to say, as far as either of those confessions go, that Chapekar declared that it was the doctrines expounded in Mr. Tilak's newspapers that had driven him to the deed?—First of all, this statement is not attacked by Mr. Tilak, and further, I think it is accurate.

2762. I am well aware by this time and we all are, what this case is about, and unless my question is an improper one, I must ask you to answer it. Do you now say that it is accurate or inaccurate?—I say it is accurate. Which page are you reading from?

2763. Page 48?—I say it is accurate, and I say further, it is not impugned by Mr. Tilak.

2764. Do you know, Sir Valentine, and you must realise it by this time in this case, that when a man brings an action for libel, if the Defendant is going to say it is true, he has to give Particulars of what he relies upon. You realise that I am sure. Now, will you just look at page 8 of the Particulars? In your own Particulars, do you see where there has been a red ink alteration on that page?—Yes, I see that.

2765. Can you see how it stood before it was altered?—Yes.

2766. It stood like this first of all, did it not? Those who were preparing your defence put this as what they were going to prove: "The murderer of Mr. Rand and Lieutenant Ayerst declared, as the murderer of Mr. Jackson declared, that it was the doctrines expounded in

the Plaintiff's and other newspapers that had driven him to commit the murder." That is so, is it not?—Yes.

2767. That has been altered, you see?—Put in another form.

2768. The form is now: "The murderer of Mr. Rand and Lieutenant Ayerst declared that he had committed the murder for the benefit of the people, as the murderer of Mr. Jackson declared that he thought that by killing Englishmen he would get justice." Do tell the Jury: your view. Do you really suggest that those two things are the same?—I do not say that the one excludes the other.

2769. Now come. Let the Jury judge for themselves. It was a slip, was it not—I do not want to use too harsh a word—which you made in your book when you wrote saying that the man who had murdered Mr. Rand had pointed to Tilak's organs? I suppose a contributor to "The Times" may make a slip?—It was no slip to say——

Sir EDWARD CARSON: There is nothing about Tilak's organs here.

2770. Sir JOHN SIMON: Yes: "The doctrines expounded in Tilak's newspapers." If there is a difference let me give you the benefit of it. It was a slip, was it not?—No.

Mr. Justice DARLING: I do not quite see this. You see the Particulars relate to the plea of justification, and the plea of justification relates to the portion of the book which is complained of in the libel. Now, this that you are reading, if I have it right, is not complained of in the libel at all.

Sir JOHN SIMON: It arises in this way: The libel which is complained of is the passage which ends with the sentence "no direct communication has been established between the crime and Tilak," and by way of justifying that in the first instance the Defendant put on the record the statement that "the murderer of Mr. Rand and Lieutenant Ayerst declared that it was the doctrines expounded in the Plaintiff's newspapers that had driven him to commit the murder." That is how it arises.

Mr. Justice DARLING: That is what the pleader put. Then what I am pointing out is that that does not refer to this: "The murderer of Mr. Jackson declared that it

was the doctrines," and so on, because the Particulars must be limited to the plea of justification, and the plea of justification must be limited to the libel complained of, and this beginning "but" and going on "declared that it was the doctrines" is not complained of being a libel at all.

Sir JOHN SIMON: That I am fully aware of, my Lord, but with great respect I do not think your Lordship has quite appreciated my point. May I put it? I complain of a libel which says in effect that Tilak is the person who struck down Mr. Rand, not literally but morally, and that is the passage which says: "No direct connection has been established between that crime and Tilak." The Defendant must either withdraw that allegation as the "Times of India" did, or must justify it. They justify it by the sentence in the Particulars, which your Lordship has just been looking at, and I point out that they have put that justification in, in the first instance and at a later stage they recoil from that and substitute something else. That is my point.

Mr. Justice DARLING: The witness points out, and I think he is entitled to the benefit of it, that this which you are reading in connection with that which is quoted above that "the murderer of Rand and Ayerst declared that it was the doctrines expounded in Tilak's newspapers that had driven him to the deed," is not complained of as incorrect or libellous.

Sir JOHN SIMON: I am not complaining that the witness should make that observation, my Lord. I am very well informed of it, because it has been constantly reiterated during the last few days. The point is this. I am cross-examining the gentleman who justifies a libel that I do complain of, and I look at his Particulars which are said to contain his justification. I observe that his Particulars include the assertion that the murderer of Mr. Rand and Lieutenant Ayerst declared this, when the murderer of Mr. Rand and Lieutenant Ayerst declared nothing of the kind, and I am merely asking Sir Valentine to answer the question whether he now, on his oath, really asserts that the murderer of Mr. Rand had declared anything of the kind, and the Jury have heard his answer.

Sir EDWARD CARSON: All that has been amended. That was the observation of the Pleader, and it has been amended.

Mr. Justice DARLING: The Particular as delivered was this: "The murderer of Mr. Rand and Lieutenant Ayerst declared that he had committed the murder for the benefit of the people as the murderer of Mr. Jackson declared that he thought that by killing Englishmen his people could get justice." Before that, no doubt, the Pleader had put the sentence in a totally different form. I do not know how it came to be amended.

Sir EDWARD CARSON: By order of the Court.

Mr. Justice DARLING: Was it by Summons taken out by the Plaintiff?

Sir EDWARD CARSON: Yes, my Lord.

2771. Sir JOHN SIMON: As long as it stands in the way your Lordship puts it, I am content. (To the Witness): Do you, Sir Valentine, now say that as it originally stood it was true?—I say it is perfectly true to say, as I have said in my book, that Chapekar admitted in his confession that——

2772. It is page 48——

2773. Mr. Justice DARLING: "Declared that it was the doctrines expounded in Tilak's newspapers that had driven him to the deed"?—That it was the doctrines which are to be found expounded in the "Kesari."

Sir JOHN SIMON: As I follow you, you do not see any reason why anybody should have altered that in red ink?

Mr. Justice DARLING: How could he? He says he is not a lawyer.

Sir JOHN SIMON: I am still entitled to ask the question, unless your Lordship says I am not.

Mr. Justice DARLING: I always think it is not right to cross-examine a witness who is not a professional man on pleadings, because they are technical even to people whose business it is to prepare them.

Sir JOHN SIMON: If your Lordship thinks I am not entitled to put it, I say no more.

Mr. Justice DARLING: I do not say that.

2774. Sir JOHN SIMON: I have asked Sir Valentine about it, and the Jury have heard his answer. (To the

Witness): Beside the two confessions, as we have agreed to call them, have you any other written material which would justify such a statement about Chaphekar?—All the articles published in Mr. Tilak's papers.

2775. You did not follow me. I want you, if you can, to address your mind to the point I am putting to you which ought not to be very difficult. I am asking you about your information as to what Chaphekar said or wrote except those two confessions?—No, I do not think I had.

2776. I see by this confession, the earlier one in date, that this man, Chaphekar, said that he had got two fellow conspirators, somebody named Balkrishna and somebody named Bhiskute. You will find that at the top of page 377?—Yes.

2777. Bhiskute had died, and that only left one other?—I see that on the previous page.

2778. This man, Chaphekar, had said that he had put some "dammer" on the Queen's statue; I suppose that is tar or something of that sort, is it?—Yes.

2779. And a string of shoes on the railing?——

2780. Mr. Justice DARLING: It says: "Balkrishna and I took about six small pictures of the Queen from the schoolbooks and pasted them on shoes and then hung them on the railing of the Budhwar fountain." Does that mean the Queen of England's statue?—Yes.

2781. "We prayed to God all day to favour us in our design"; that was the murder?—Yes.

2782. Sir JOHN SIMON: Would you turn to page 46 of your book. There are some five lines which are said to be an extract from a Shlok. Turn on to page 48: "The murder of Rand and Ayerst, the same young Brahmin who had recited the Shlok which I have quoted above." Do you see that?—Yes.

Mr. Justice DARLING: That means Chaphekar, does it not?

Sir. JOHN SIMON: Yes.

2783. One other reference. In your book, page 46, you say just below the quotation of the Shlok: "It was on the occasion of the Shivaji coronation festivities that the right—nay the duty—to commit murder for political purposes was first publicly expounded. With Tilak in

the chair, a Brahmin professor got up," and so on Putting those things together, am I right in saying that your book says that Tilak was present when Chaphekar recited that Shlok?—I do not say so in my book; that applies to a Brahmin professor who got up to vindicate Shivaji's bloody deed when Tilak took the chair.

2784. You understand I am not for the moment asking you what you understand the truth to be. I am asking you to explain your book to me. Do you really tell the Jury that what you wrote in this book taken together does not amount to an assertion that Tilak was present when that was recited.

Mr. Justice DARLING: He says here: "the same young Brahmin who had recited the Shlok which I have quoted above." Where is it quoted above?

2785. Sir JOHN SIMON: At the top of page 46, that is why I read that: "What was the purpose and significance of this movement may be gathered from the Shlok or sacred poem improvised on this occasion by one of Tilak's disciples." This occasion, is the occasion of the commemoration being held in Tilak's own presence at Raighar. It goes on: "the principal commemoration being held under Tilak's own presidency at Raighar." Over the page there is a quotation of this poem or whatever it is: "It was on the occasion of the Shivaji coronation festivities"—the next sentence, "with Tilak in the chair." Interpret your own book for me, and just tell the Jury, when you wrote that, did not you mean people who read it to believe that Tilak was present when that was recited—Yes or No?—No; there is the book, which speaks for itself.

2786. It becomes a matter of comment to the Jury? —The sentence begins: "With Tilak in the chair, a Brahmin professor got up to vindicate Shivaji's bloody deed." That is what the reference is to Tilak in the chair.

2787. I am anxious to see you do yourself justice as far as the answers to my questions go. Look back to the bottom of page 45, and take your time about it. You see the sentence beginning: "At any rate Tilak, brought Shivaji to the forefront and set in motion a great 'national' propaganda which culminated in 1895 in the

celebration at all the chief centres of Brahmin activity in the Deccan of Shivaji's reputed birthday." Now, note these words, they may help you to your answer: "The principal commemoration being held under Tilak's own presidency." "What was the purpose and significance of this movement may be gathered from a Shlok or sacred poem improvised on this occasion." What is the occasion?—The occasion of these festivities.

2788. Then there is the quotation over the page. Then it says: "It was on the occasion of the Shivaji coronation festivities that the right—nay the duty—to commit murder for political purposes was first publicly expounded. With Tilak in the chair"—and so on. I understand your answer to be that that was not intended to mean, and you do not think it implies, that Tilak was present when that was recited?—They are two separate questions which illustrate the meaning of these Shivaji celebrations; they are not necessarily connected.

2789. This thing at the top of page 46, I understand, you did not mean had been quoted in Tilak's presence; is that right?—Not necessarily. I do not know whether it was quoted in his presence or not.

2790. Presumably you got it from somewhere?—Presumably I did.

2791. You have already told me you had no written materials as to what Chapekar said except these two confessions. Where did you get it from to put in your book?—You are now mixing up my answer to another point with the questions you are putting now. I said in regard to the materials I had these two confessions.

2792. Where did you get the Shlok from?—It is very difficult to remember exactly from what source, but I think I got it from Sir William Lee Warner.

2793. Let me see if I can help you about it. It comes, does it not, from something that is called the "Autobiography of Chapekar"?—I do not know.

2794. Have you heard of a thing called the "Autobiography of Chapekar"?—I think I have, yes.

2795. Have you ever seen it or any part of it?—I do not think I have seen the Autobiography itself.

2796. Have you ever seen it or any part of it?—If

Sir William Lee Warner communicated to me certain things which were part of it to that extent I have seen part of it.

2797. Do you really mean to tell the Jury that you cannot inform them as to whether in your belief you have seen anything from this supposed "Autobiography of Chapekar"?—I have not seen the document which you call the "Autobiography of Chapekar," but I have had communicated to me statements which, I believe, may have been taken out of it.

2798. Mr. Justice DARLING: Who did you say Sir William Lee Warner was?—He was a high official in the Government of Bombay about the period with which we are dealing here, and was afterwards a member of the Council of India in London.

2799. He is dead, is not he?—Yes.

Mr. Justice DARLING: In some of these documents I notice his name.

Sir JOHN SIMON: Sir William was a very well-known official. I had the pleasure of a slight acquaintance with him.

Sir EDWARD CARSON: He is mentioned in some of the articles I read.

Sir JOHN SIMON: Just look at page 316 of the pink book. There is a reply to a letter which is on page 313. It is addressed to Mr. Tilak: "Sir,—I am directed to acknowledge the receipt of your letter dated the 5th inst., in which you give a list of the subjects the documents relating to which on the records of Government you desire to inspect. I have taken the instructions of Government in the matter, and I am directed to make the following reply to each specific request: (1) Statements made by D. H. Chapekar to the police and his autobiography. The documents referring to these matters are confidential and inspection cannot be given." Reading that it is plain, is it not——

Sir EDWARD CARSON: I do not know how this is in evidence; whether Sir Valentine Chirol has anything to do with it.

Mr. Justice DARLING: It is directed to the Plaintiff, not to the Defendant.

Sir EDWARD CARSON: So I see. It was not put

in evidence that I know of, and I do not know what it is, and the Plaintiff was not asked about it.

Sir JOHN SIMON: I am asking Sir Valentine *Chirol.*

Sir EDWARD CARSON: You can ask if he knows about it, but you have no right to read it out.

2800. *Sir JOHN SIMON: Who is* Mr. Robertson? —He is the head of one of the departments of the Government of Bombay.

2801. Has he been assisting you in this case?—No.

2802. You are, are you not, being assisted in this matter by the India Office or by the officials of the India Office?—I am being assisted by one Government official.

2803. Look at the gentleman who is sitting here?—That is the official.

2804. Who is he?—He is an officer in the service.

2805. Mr. Justice DARLING: You want to know his name?—Mr. Montgomerie.

Sir EDWARD CARSON: My Lord, the Plaintiff examined him out in India on his commission.

2806. Sir JOHN SIMON: I am still quite entitled to put the question. He has been lent, has not he, in order that he may assist you in this case?—Certainly.

2807. And this Mr. Robertson is another official?—Mr. Robertson is another official, but he is not lent to me in this case.

2808. Look at page 316. Did you know or had you heard that the Plaintiff was asking for the assistance of of the authorities for some documents in this case?—Of course I did; it was all in the Commission taken in India.

2809. So you see that the result is this, that this Autobiography, as you believe, parts of it at any rate, or the substance of parts of it, have been communicated to you?—Not by Government.

2810. I presume not a breach of confidence, so I assume with the knowledge of somebody; but it has been denied to the Plaintiff?——

Sir EDWARD CARSON: He has not said so.

Sir JOHN SIMON: He has said he knows all about what is on page 316.

Sir EDWARD CARSON: He has not said that.

Sir JOHN SIMON: I am very anxious to do the

thing properly.

Sir EDWARD CARSON: Well, I doubt it.

Sir JOHN SIMON: I will not make the obvious retort.

The WITNESS: It was not given to me and denied to the Plaintiff.

2811. I shall have to take it by steps, I am afraid it takes longer, but I shall get there. Do I understand you to say that you knew before you went into the box about this letter on page 316 about the request to see the Autobiography?—It was known in Bombay.

2812. Then you did know?—I knew this letter existed.

2813. That is the answer to a request of an official in the Government of India to let Mr. Tilak have a sight of the document there mentioned?—Yes.

2814. I suppose you would agree it would be only fair if one side in this action had such a thing the other side should have it too?—I say that document was not communicated to me by the Government of Bombay and communication of it refused to Mr. Tilak.

2815. Do you agree it would not be fair for one side in this litigation to have information which the other side has not got from official sources?—Yes.

2816. As far as any documents or materials are concerned which you can produce have you now told us of all that there is about Chapekar's statements as far as you know?—As far as I remember.

Mr. Justice DARLING: Is that all you are asking about this document?

Sir JOHN SIMON: I think so.

2817. Mr. Justice DARLING: Who are Messrs. Little and Co.?—My solicitors in Bombay.

Mr. Justice DARLING: I think it is only fair to add this. This is a document which was produced, it is said, in India. Judicial Department, Poona, dated July, 1917, from L. Robertson, Esq., Secretary to Government, Bombay, to the Plaintiff, Mr. Tilak, and it says what Sir John read just now. "I am directed to acknowledge the receipt of your letter dated the 5th inst. in which you give a list of the subjects the documents relating to which on the records of Government you desire to

inspect. I have taken the instructions of Government in the matter and I am directed to make the following reply to each specific request." Then comes a whole lot of replies. That document is confidential and cannot be given. Then he signs it, "L. Robertson." Then after that it says: "List of official documents an inspection of which was allowed to Messrs. Little & Co." Then he gives a list which is totally different to those which are refused to the Plaintiff. He tells Mr. Tilak there exactly what documents have been shown to the solicitors on the other side. That being so the Plaintiff could have them all.

Sir JOHN SIMON: I am very glad your Lordship mentioned that.

Mr. Justice DARLING: I only read it because otherwise it looks as though the Government of India had not been playing fair.

Sir JOHN SIMON: What I wanted to know is something a little different. I hope under the stress of advocacy I shall not make wild charges in that way; it is not part of my duty to do so, and I think I shall not do so.

2818. What I wanted to follow is where did you get this extract from the Shlok from. I understand you to say that to the best of your belief though it did not come to you officially it came from an official source, it may have come from the Autobiography?—It came to me from Sir William Lee Warner to the best of my belief, who supplied it from notes which he had collected for a long time with regard to the sedition propaganda in India.

2819. Have you got those notes?—No. I returned them to Sir William Lee Warner.

2820. Mr. Justice DARLING: At the time that Sir William Lee Warner supplied you with whatever it was, what was his position?—I think at this particular time I am referring to he had just retired from the Council of India in Whitehall, but I will not swear that he had retired, he may still have been a member.

2821. What would he have been in 1897?—I think he had already come to the India Office.

2822. From India?—From the Government depart-

ment there.

2823. Sir JOHN SIMON: You and I, I am sure, will agree about this. The last thing that either of us would suggest, I am sure I can speak for myself, would be that Sir William Lee Warner was not in the circumstances doing what was quite proper and loyal. I am not making a suggestion of that sort at all; I am sure you will agree?—I rather gathered, from what you said, that you were.

2824. You are quite wrong?—I am very glad.

2825. Sir William Lee Warner was a source of information for you because of his long connection with the Government of India?—Yes. Of course he was a friend of mine.

2826. That would be a ground on which he would be a more valuable source than some other equally close friends, and in those circumstances, unofficially as I gather, he supplied you with some material, including that Shlok?—Yes.

2827. Mr. Justice DARLING: Were these Shivaji celebrations open to a large number of people?—Yes.

2828. If anybody recited a Shlok, numbers of people would know of it?—I should think a large number of people would.

2829. Is it something like an Eistedfodd?—I have never been to an Eistedfodd.

Mr. Justice DARLING: I thought it might be very natural Sir William Lee Warner should know portions of things that were recited there; they might be published in the papers.

2830. Sir JOHN SIMON: Granting all that, you will tell us frankly your impression is, is it not, that this extract came out of this wretched man's Autobiography?—It may have come out of that.

2831. Is not that your impression?—I think it is, yes; but only an impression.

2832. Mr. Justice DARLING: Was the Autobiography published?—No.

Sir JOHN SIMON: If it had been, one would not have been refused it on the ground that it was confidential.

Mr. Justice DARLING: I do not know.

2833. Sir JOHN SIMON: My Lord mentioned the Shivaji celebrations just now, and the character or general view about them. Is it your view that the Shivaji celebrations, though they may profess an historical character, are really a cloak for sedition and revolution?—You say: "though they profess an historical character"; it is more than a profession, they are given an historical character.

2834. I was endeavouring to put it in a form which would not raise controversy. That is your view?—Very largely.

2835. They are exploiting historical tradition for seditious and revolutionary purposes?—To a very great extent.

2836. And on that ground ought to be discountenanced from the point of view of preserving British Rule?—So far as they are used for that purpose, certainly.

2837. I understand your view is that Mr. Tilak, as far as he had anything to do with it, was using them for that improper purpose?—More and more as years passed—every year more.

2838. Can you understand why the Government of India should subscribe to such celebrations and crusades, if that is right?—Subscribe in what manner?

2839. It has been in Court; I heard some questions put to you?—I do not understand what you are referring to.

2840. I am afraid I must go to the pink book again. Look at page 306. It appears from the documents on that page that the Government made a grant of 5,000 rupees towards the cost of repairing some tank and erecting a protective chhatri for Shivaji's tomb at Raigad. Do you notice that that is the answer to a memorial which begins on page 304?—I know now to what you are referring.

2841. You are not called upon either to defend or condemn the action of the Government of India, but I want to follow your view. If your view is right that impartial people take this view, why should the Government of India subscribe that?—The Government of India, as I understand it, subscribe for the maintenance of

historical monuments; Shivaji was a great historical character in India, whatever we may think of him. The Government of India very properly subscribe to the maintenance of a monument commemorating his memory, but that does not mean that they subscribe to Shivaji celebrations, that they subscribe to the use that Mr. Tilak makes of that historical occasion.

2842. Look at the document before you say that finally; page 304: "The movement for repairing the octagonal stone plinth on which the body of the great Shivaji was cremated in the hill-fort of Rayagad in the Colaba Collectorate of the Presidency, and for erecting a suitable chhatri thereon, with proper provision for its maintenance and the celebrations of annual festivals, originated in Deccan about 25 years ago," and so on. Then at the bottom of the page: "In the meanwhile the subject was taken up in hand by the leading gentlemen of the Deccan," and so on. Then it refers on the next page to Lord Reay and says: "The growing interest in the Mahratta history and the discovery and publication of many original papers bearing on the same, together with a new edition of the Mahratta ballads published later on by Mr. Acworth"——

2843. Mr. Justice DARLING: On this page it all seemed to have come from an archæologist, Mr. Douglas. It was in 1883 that Mr. James Douglas, in his book of Bombay, referred to the dilapidated condition of the Samadha, which he called the cenotaph of Shivaji, and pathetically observed that no one, not even the descendant of the Rajas and Sardars whom great Shivaji handed down wide domains, now cared to keep in repair the tomb or temple of the Founder of the Mahratta Empire. Soon afterwards Mr. P. B. Joshi of Bombay wrote a poem in Mahratti on the same subject; while Mr. Govind Babaji Joshi of Bassein, about two years after, paid a visit to Rayagad, and, personally examining the condition of the Samadha, issued an appeal for raising funds to repair the same and to build a chhatri thereon." Then it was taken up by leading gentlemen and so on. The answer to the Petition is that the Government will give 5,000 rupees towards repairing the Gangasagar Tank. What was that? Is that a monument?—There is generally a

tank for ablutions outside.

2844. "And of erecting a protective chhatri"—what is a chhatri?—A sort of stone cover.

2845. "Over Shivaji's tomb at Rayagad on condition that the designs for the latter be first submitted to and approved by the Government in the archæological department," and so on.

Sir EDWARD CARSON: If your Lordship looks at page 307 they refused the stone plinth.

Mr. Justice DARLING: Yes: "The repairing of the octagonal stone plinth on which the body of Shivaji was cremated, the restoration of the temple of Mahadeo, and the fencing of the Durbar ground in the Rajvada and their subsequent maintenance are, I am directed to say, matters which, in the opinion of His Excellency the Governor in Council, may well be left to private subscription."

2846. Sir JOHN SIMON: Is it your view that the Government of India after 1907 was supporting the erection of a monument, while at the same time it was opposed to the celebration of Shivaji?—One was an archæological question and the other was a political celebration. Government supported the archæological measures necessary to preserve the tomb of a man who played a very conspicious part in the history of India, but that does not commit the Government to approving of the gross misuse which Mr. Tilak made of Shivaji's memory.

2847. Is it your view that that is what the Government were doing and what Mr. Tilak was about in these annual celebrations in the Government view was quite another thing?—Quite.

2848. Looking at the memorial, my Lord has read part of it, I want to read something else; the letter at page 305; after this interesting archæological account it goes on: "It was unanimously resolved at this meeting to raise a fund for repairing the Samadha, building a chhatri thereon for making arrangements for its maintenance, as well as for the annual celebration of a festival in honour of the hero of Maharashtra; and a committee with Mr. Bal Gangadhar Tilak as the working secretary, was appointed for the purpose"?—What was the date at

which this committee was operating?

Mr. Justice DARLING: On the 24th may, 1885. It was resolved "to memorialise Government and also to take necessary steps for the purpose of repairing the Samadha and perpetuating the memory of the great founder of the Mahratta Empire. A few months after, Lord Reay, the then Governor of Bombay, gave instructions for fencing and clearing the ground round about the Samadha and keeping it in order at a cost of five rupees a year." Then they come to Mr. Douglas's book in 1893, he: "referred to what Lord Reay had done and observed that 'a few crumbs' that fall from the archæological bureau would suffice to keep in repair a memorial of a dashing and most romantic period."

Sir JOHN SIMON: I want to go on.

Mr. Justice DARLING: A public meeting was held in 1895.

2849. Sir JOHN SIMON: It was after that. That is near enough. "A committee with Mr. Bal Tilak as working secretary was appointed for the purpose." It is obivious, is it not, that when the Government responded to this appeal they responded with knowledge of the fact that Mr. Tilak was one of the organisers of the celebration?—That was before Mr. Tilak had really disclosed the purpose for which he was using these things in 1895; the great celebration which was the beginning of all this question was 1896.

2850. Do you know what was the year when the Government did subscribe?—The subscription to the monument was much later.

2851. What is the year?—1907, I think.

2852. Do you really suggest that in 1907 the Government of India did not perfectly well know what Mr. Tilak's interest in these matters was?—In 1907 the Government subscribed to the archæological side of it. There is no reference, in 1907, in the Government letter, to Shivaji celebrations.

2853. Surely you carry dates in your head. In this case your Counsel have been relying upon things which Mr. Tilak's papers published in the year 1896, 11 years before this, about Shivaji?—The two questions are not cognate. In 1907 there is merely a question of the

archæological repairs, that is all the Government grants the money for.

2854. This very Shlok that you quote in your book, which is supposed to be a revolutionary song stirring up sedition by glorifying Shivaji, was in the hands of the Government 11 years before this?—What has that to do with the grant for the purpose of an archæological monument?

2855. Very well, I will leave it. You see this memorandum goes on: "From this year (1896) onwards annual festivals, either on the natal or on the coronation day of the great Shivaji came to be celebrated at several places in the Maharastra the festival at Raygad being held on the 15th April 1896. The fund which was started at the public meeting held at Poona on 30th May, 1895, now amounts to nearly Rs. 25,000. It is mostly made up of small subscriptions of less than one anna each from thousands of people; and it is confidently believed that further contributions, if needed, would be given with equal enthusiasm." Is it your view that respectable and prominent natives whose loyalty was beyond suspicion would not associate themselves with Mr. Tilak's movements for Shivaji?—With which aspect of his movement for Shivaji?

2856. With his movement for making these festivals the important things that they were?—They would not associate themselves for the purposes to which he turned these festivals; they would not associate themselves with the language which Mr. Tilak used at these festivals—no loyal Indian, certainly.

2857. I am very unfortunate this afternoon; I cannot put a plain question, apparently. I will ask you again. Is it your view that no respectable, prominent and loyal man would associate himself with Mr. Tilak's movement for making the Shivaji celebrations all that he tried to make them?—Certainly not all that he tried to make them.

2858. I suppose I may take the Maharajah of Kolhapur to be at once a respectable, a prominent and a loyal person?—Yes.

2859. You know, do not you, that your friend the Maharajah in fact subscribed, I think largely, and

certainly gave the most active support, to this very movement?—To the movement for the purposes to which Mr. Tilak turned it?

2860. To the movement for making the Shivaji celebrations into important annual enthusiastic affairs?—For the abuse of the British Government?

2861. The Jury will judge that. Just turn to page 123 in the pink book. This is in 1895, it is therefore earlier than the subscription of the Government of India?—Yes.

2862. As I understand it, looking at that, the Maharajah seems to have been approached by a very large deputation; the names are given, among them Mr. Tilak. On the next page there is a report of a long speech. On page 125: "Then the Diwansaheb communicated the Maharajah's reply to the deputation." Who is the Diwansaheb?—The Prime Minister.

2863. "Shivaji Maharaj is the original founder of our lineage and is one of our forefathers, and the Maharaja saheb thinks it his duty to arrange for the repairs of his Samadhi. And that he feels great satisfaction to see that the people of Maharashtra are earnestly helping this work. The Maharajah is willing to substantially help the management and building of a chhatri in the manner as the chhatris of the Maharajah's other forefathers are managed." Then it goes on and says, various people are helping in the work. He did, did not he subscribe largely?

Sir ELLIS HUME-WILLIAMS: Will you read the first four lines of page 123?

2864. Sir JOHN SIMON: "A deputation of leading and influential men from several quarters had gone last Monday to H. H. The Maharajah of Kolhapur to request him to take in his hands and to finish the work as per resolution passed in the meeting which was convened here in last May with the object of collecting subscriptions for the repairs of the Samadhi of Shri Shivaji Maharaj." Are you drawing that distinction that this is only for subscriptions for his tomb?—I am drawing the distinction that this was in 1895 before the development given by Mr. Tilak to the Shivaji festivals. Naturally the Maharajah would support any fund to do

honour to his immediate ancestor. The Maharajah of Kolhapur is a descendant of Shivaji. So long as it was used for loyal purposes he would associate himself with it. That was in 1895. I say it was only in 1896 the purpose to which Mr. Tilak subsequently more and more turned the Shivaji celebrations was really disclosed.

2865. May I take it that from 1896 onwards the purpose for which he was doing this was disclosed and known to competent observers?—In 1896 the first indications were given. Then after his conviction for a certain number of years the Shivaji celebrations were very quiet, and might be looked upon as more or less devoted to the more natural purpose of celebrating a great historical character without subverting the loyalty of the people.

2866. When, according to the judgment of competent observers who are continuously out there would you say that the bad character of the movement again became obvious?—Some people would put it one year or two years earlier or later according as they were more easily convinced of the change that was being made.

2867. I do not know whether you are prepared in this matter to give Mr. Tilak the benefit of the doubt?—I am not.

2868. What is your year when you say the movement again became obviously, to the competent observer who looked below the surface, a bad movement?—It culminated in 1907 and 1908; 1906, 1907 and 1908 was the period.

2869. That is to say, at the very time when the Government of India was subscribing Rs. 5,000, according to you, competent and impartial observers would have known that the Shivaji celebrations were a hotbed of sedition?—Not according to me; I never said anything of the kind.

2870. According to your views?—The Government of India did not subscribe to the Shivaji festivals, they subscribed to the maintenance of certain monuments. The maintenance of those archæological monuments was just as much the duty of the Government of India to continue, whether they were being used or not by Mr. Tilak for disloyal purposes. That does not affect the

sanctity of the monuments.

2871. That is quite intelligible. I had not followed that you put that before. You mean that, although the Government of India had known the result of making this fine memorial and asking people to it would be directly to promote revolution, none the less, in your view, they would have subscribed just the same?—It was by no means the result of it.

(Adjourned till to-morrow morning at 10-30.)

EIGHTH DAY.

February 18, 1919.

Sir VALENTINE CHIROL, recalled.

Cross-examination continued by Sir JOHN SIMON.

2872. Sir Valentine, on one matter of fact in asking you questions yesterday I made unintentionlly a mistake. I have noticed it since, and I want to correct it immediately. It is in the Shorthand Notes of yesterday. You were good enough to take from me a matter of fact which I thought was so, and I see I was not quite accurate. At page 333 I was asking you about the two confessions of Chapekar, the man who killed Mr. Rand. At Question 2753 I said to you: "Perhaps you will take it from me, subject to my showing it, that the first of these in order of date, the one of October the 8th, 1897, was made the very day the man was caught?" You accepted it from me and I believed it was so at the time. I was misled into saying that, and I wanted to tell you so.

Mr. Justice DARLING: You said: "subject to my showing it."

2873. Sir JOHN SIMON: Yes, my Lord. It shows that one cannot be too careful in making a statement to a witness instead of asking a question. (To the Witness): Now the case of the Jackson murder was 12 years later? —Later than what?

2874. Later than the Rand murder? I think that is right. The Rand murder was in 1897 and the Jackson murder was in December 1909, and in the case of the Jackson murder the name of the principal criminal, the man who actually fired the shot, was Kanhere?—Yes.

2875. Do you know that in that case also, Kanhere made two confessions?—Yes.

2876. It is convenient just to get the necessary dates. The murder was on December 21st, 1909, I think. The first confession is at page 325 of the pink book, and that is a confession on the 21st December, 1909. It was, therefore, with reference to Kanhere and not with reference to Chapekar that I ought to have said that it was on the very day he was caught. If you will look at page 325 of the pink book, you will see that there is there printed: "Translation of a Marathi writing purporting to

be a Confession of Anant Lakshman Kanhere," and if you look to the end of it, about halfway down page 327, just below the man's signature, the date is 21-12-09, that is the 21st December, 1909, "10 minutes past twelve at midnight, at the Theatre." So it is evident in that case the man was laid hold of at once, and this statement was taken from him later the same night.

Mr. Justice DARLING: The note proceeds to say that it was immediately following the arrest: "At the time of reading the confession four armed police were near the prisoner to guard him as he looked desperate man and was likely to become voilent."

2877. Sir JOHN SIMON: Yes, my Lord. (To the Witness): If you would then turn over to the next page you will there find a second statement—I call it for convenience the second confession—and that begins at page 328 and going on to page 338 is dated 31st January, 1910, which is about a month later. Some questions were put to the accused, and it goes on to the top of page 340, by which time the date is the 1st of February, that is to say, it extends over two days?—Yes.

Mr. Justice DARLING: It is quite simple.

2878. Sir JOHN SIMON: Yes, my Lord. I want the witness to appreciate it, so that we shall be at one. There is a break in page 338, and the date is 31-1-10. Then it goes on again below. If you turn over to page 340, you will see by the time the thing finishes it is the 1st of February?—Yes.

2879. So that there are two confessions separated by an interval of about a month. I want to understand this. Were both those confessions or some copy of them before you when you collected your material upon which you wrote your book?—The substance of them was within my knowledge.

2880. Did you feel disposed to attach some value to the statements thus recorded which this man made?—Undoubtedly.

2881. Will you just turn to page 326, which is in the earlier of the two confessions, the one which he made immediately after the crime. It is question and answer there, from the top of the page. Do you see the fourth question on the page? "Have you anything more to

state" ?—I do not follow the question.

2882. Are you looking at page 326?—Yes.

2883. Do you observe it records the questions and answers alternately?—Yes.

2884. It is the fourth question from the top of the page. Will you look at the answer: "I have of my own accord committed the murder of Mr. Jackson. I have not committed it at the instigation of anyone else"?—Yes.

Mr. Justice DARLING: There is another question upon it immediately which seems to have some bearing.

Sir JOHN SIMON: The one just above it, my Lord.

Mr. Justice DARLING: No: "Is there any connection between you and Savakar?"

Sir JOHN SIMON: Yes, my Lord: "Is there any connection between you and Savarkar?—I met Savarkar once at the Manmad Station. That was all my acquaintance with him. I was seated at the station. He then came to me and asked me: 'To what part of the country do you belong?' I said: 'I am a student. Please help me.' Then he said: 'I will see later on.' That was all the conversation that took place between him and me."

Mr. Justice DARLING: But then if you look below there is this which I saw just now when you referred to it. On page 338 it is clear that that is not all.

2885. Sir JOHN SIMON: That is the very point I am going to take, my Lord. (To the Witness): You observe, Sir Valentine, do you, that in the passage I have referred you to, this man arrested for shooting Mr. Jackson on the 21st December, 1909, is asserting that he has not committed it at the instigation of anyone else?—Yes, that is the statement here.

2886. Do you realise that when you look at this man's statements they are contradictory? He said one thing at one time and another thing at another time?—I do not regard them as absolutely contradictory and I think their value must be taken as a whole and as far it is borne out by other evidence.

2887. I should quite agree with you. That is quite fair, but what I want you to say is whether you realise that the record of what this murderer said was matter which the moment one saw it, was not consistent?—I do not think there is any fundamental inconsistency.

2888. Let me put an instance to you. Does he not, in his first confession, say that what he had done had no connection with any secret society whatever, and does not he, in the second confession, give you the names of three or four people who had formed a secret society with him for this purpose?—I do not think it does say so.

Mr. Justice DARLING: Where does he say it has no connection with a secret society?

Sir JOHN SIMON: I will show your Lordship. First of all, would your Lordship look at page 327. I should be obliged if the witness would confine himself for the moment to the point I am putting. At page 327, the second answer is this: "On reading newspapers it appeared to me that Sahibs were practising oppression and that they committed the murder of us poor people. I therefore formed this intention. It has no connection with any secret society whatever." Now will you kindly contrast with that page 338: "I am going to put to you questions. You may answer if you like to?—All right. Q. Were you a member of the secret society?—I took the oath at Yeola. Q. How long ago was it?—Seven or eight months ago"—and then he goes on and gives the names of the people who were members of this secret conspiracy.

Mr. Justice DARLING: "Who gave you the oath?"

Sir JOHN SIMON: Yes, my Lord, "Who gave you the oath?—There is Kashinathpant Sawarkar there. He gave me the oath."

Mr. Justice DARLING: Is that the same Savarkar?

2889. Sir JOHN SIMON: No, my Lord. That is quite a different person?—It is not Sankar, it is Savkar.

2890. Sir JOHN SIMON: Is not Savkar an occupation in life—a banker or moneylender?—Yes.

Mr. Justice DARLING: It is translated "a banker, merchant or trader"—"He gave me the oath."

2891. Sir JOHN SIMON: Yes, my Lord. If you look at the middle of the next page, he is asked: "You told the Nasik people once or twice: 'I am not prepared to commit the murder of Mr. Jackson.' Why, then, did you finally make up your mind to do so?—I had full confidence and faith in Anna Karve. I got a message

from him. And therefore I committed the murder." Having had your attention called to that, do you still tell the Jury that in your view, the confession made by Kanhere in material matters were consistent?—I say that taken as a whole the facts related in them are not inconsistent.

2892. According to you, there is no inconsistency between a man saying: "I did the thing entirely on my own motion and have no connection with a secret society," and saying a minute later: "I am a member of a secret society that swore"?—I have not said there is no inconsistency between specific statements contained in these confessions. I say there is no inconsistency between the general substance of his confessions as a whole when borne out by other evidence.

Mr. Justice DARLING: You ought to compare the two. You read this on page 327: "Since when did you get the idea of committing the murder?—On reading newspapers it appeared to me that Sahibs were practising oppression and that they committed the murder of us poor people. I therefore formed this intention. It has no connection with any secret society whatever." You ought to compare that with page 339 where he explains it further, as it seems to me. He is there asked: "Q. If Karve had told you, would you have killed any Sahib without making any inquiries whatever?—Yes, I would have killed; for, I have full confidence in Karve because he was at any rate more educated than I. Q. How did the idea of killing Sahibs first"—"first" it is, you see—"come into your head?—It appeared to me that our people do not get justice from Sahibs. I have read many instances of zulum (oppression) in the 'Kesari,' 'Rashtramat,' 'Kal' and other newspapers. I think that by killing Sahibs we people will get justice. I never got injustice myself nor anyone else whom I knew. I now regret having killed Me (herban) i. e. (the kind) Mr. Jackson. I killed a good man causelessly. I feel sorry for it. (Kashinath Tonpe shown to the accused.) This is Kashinathpant who is a Savkar at Yeola".

Sir JOHN SIMON: "A Savkar" I think, means a moneylender?

Mr. Justice DARLING: Yes. "When did you know

about Savarkar's Secret League?—I read in the newspapers that here was Savarkar's Secret League. And it was in consequence of that that I asked Ganu about it." It is rather a complicated business how he came into this.

2893. Sir JOHN SIMON: It was for that reason I was at the moment endeavouring to concentrate upon a definite point; it is difficult otherwise to get a clear view. I want to go back to the question I was putting which I think is quite a clear one. Do you realise now that in his first confession this man asserted—I daresay falsely—but he asserted that he was acting quite by himself and had nothing to do with any secret league—Is the question you are referring to the one in which the direction applies to "at any one's instigation"?

2894. Yes?—I do not question it.

2895. He says, I see in his first confession: "I formed this intention. It has no connection with anyone else." You see that?—Yes, quite so.

2896. Of course, that may be true or false, but surely you will admit it is wholly inconsistent with saying: "I did the thing in the course of a secret conspiracy, and the person who directed me to do it was a man called Karve"?—I have already admitted to you, Sir, that there are inconsistencies in this statement and other statements made, but that the statements have to be taken as a whole and with other evidence on that same point.

Mr. Justice DARLING: That is why I called your attention to page 339, Sir John, because it looked to me rather like speaking by the card, "not at the instigation of anyone else," but when you look at page 339, he says that what first put into his head the idea of killing sahibs was the idea he got from reading the "Kesari," "Rastram," at the "Kal," and other newspapers—that is no one else.

2897. Sir JOHN SIMON (to the Witness): Was the man Karve, in whom he said he had full confidence and faith, also convicted at the same time?—Yes, I think so

2898. Do you notice he says he got a message from him to do it? He says in the middle of page 339: "I had full confidence and faith in Karve. I got a message from him, and therefore I committed this murder"?—Yes.

2899. I want to see whether you realise what the position was. Mr. Tilak, as far as the evidence in this case goes—he has been in the box—does not know Karve at all?—I have never anywhere stated that Mr. Tilak knew Karve or Kanhere. I have not said in my book that he knew any of these individuals. All I have stated is that he is morally responsible for the doctrines which bred the atmosphere of murder and produced these murderers.

2900. I follow that is your point, and I want you to realise in the same way, my point. Secondly, did you realise that Mr. Tilak had been in Mandalay in confinement and shut off from the world for 18 months——?—But I have stated that in my book. Of course I realised it.

2901. Let me finish my question. There is no need for us to get hot about this—and shut off from the world for 18 months before Jackson was murdered?—I have stated it in my book.

2902. Did you understand that the secret society to which in his confession Kanhere said he belonged, was one which he joined seven or eight months only before he killed Jackson?—Yes.

2903. Did you understand this, that Kanhere asserted that the reason why he killed Jackson was because he got a message from Karve?—Yes.

2904. Did you understand this: that the "Rashtramat," one of the papers I have mentioned, had never so much as appeared until after Mr. Tilak was in prison?—Yes, but he had for weeks before his imprisonment advocated and recommended subscriptions for that paper which appeared within a week of his arrest.

2905. Please do not misunderstand me. It is perfectly fair for you or your Counsel to urge that what had been done before Mr. Tilak's imprisonment may have had some subsequent influence. Do not imagine I am quarrelling with you about that, but I want to know whether you realise that Mr. Tilak had been convicted of sedition, and for more than 18 months had been in a position where he could not control or influence anything which was subsequently published at all?—Perfectly.

2906. Do you realise that there is a world of difference between saying that a man has encouraged sedition and saying of a man that in substance he is a murderer?—As you put the question, I answer Yes.

2907. That is the reason I put the question. Now I want to go back to one thing which I did ask you yesterday. In Kolhapur are Shivaji's name and memory held in high esteem and reverence?—Yes. He is the direct ancestor of the Maharajah, and, therefore, his memory is held in high esteem.

2908. There is in Kolhapur, is there not, a temple in his memory?—Of course.

2909. You say "Of course," but you have been there and I have not, and I do not suppose the Jury have been there?—But it is natural that there should be a temple to his memory in the capital, as the ruler directly descends from him.

2910. And is there a celebration there annually of Shivaji's birthday?—A religious celebration—yes.

2911. Is there a procession?—A religious procession—yes.

2912. Was there a chariot taken out in the procession and made a feature of the celebration?—I have not witnessed the procession. I believe there may be and probably is.

2913. Is it a public holiday on which all the schools are closed so that everybody can take part in it?—Yes, it is a public holiday.

2914. Would the Sirdars at Kolhapur be high State officials?—Yes, presumably.

2915. Do the Sirdars at Kolhapur wear lockets called Shivaji lockets as part of the celebration?—I really cannot tell you. I did not attend the celebrations. I should think it very likely that they did.

2916. I quite follow you when you say that, of course, the concentration of influence at places like Kolhapur would be no doubt traced to the fact that Shivaji is in fact a historical ancestor of the reigning ruler?—The reigning ruler's ancestor.

2917. Mr. Justice DARLING: Shivaji, by killing Afzulkhan, as I understand, established the Mahratta Empire in this part of the world where there had been a

Mohmmedan one?—Shivaji raised a rebellion against the Mohammedans at Delhi and waged war and in the course of the insurrection one of the incidents was the murder of Afzulkhan, which undoubtedly contributed to the insurrection, but it was only an incident in his career, an incident which is to be judged by the standard of two centuries ago.

2918. Mr. Justice DARLING: We were not so strict then. Then after that came the Mahratta Empire?—Yes.

2919. I am asking this as a matter of history. What brought about the end of the Mahratta Empire of independent rule?—The British intervention.

2920. When?—About the beginning of the last century. The Mahratta Empire had its seat at Poona and it was practically ruled by a Peshwa. It had already fallen to some extent into disintegration, it was ruled by the Peshwas, and we intervened very largely at the request of a number of States that suffered from the oppression of the Mahratta Brahmins of Poona, exercised through the Peshwas.

2921. Was it put an end to in any great battle?—No, I do not think you can put it down to any great battle.

2922. The end of it was that the British Empire ruled over it?—Yes, over all these parts of India with the exception of the Kolhapnr State.

2923. Sir EDWARD CARSON: There was a battle?—Yes, there were many engagements.

2924. There was a battle in 1817?—Yes, there were many engagements. There was the battle of Kirkee. The State of Kolhapur remained as a native State under British supremacy.

2925. Sir JOHN SIMON: Now, will you just tell me this. Is it a view held as far as you know by the Maharajah of Kolhapur in his circle, that Shivaji was some treacherous scoundrel or do they regard him as a hero who acted a noble part?—I do not think it is their view, any more than it is my view, that he was a treacherous scoundrel. I say he behaved with treachery on one occasion, and whether he did so or not, is really not a matter of issue in this case. Because Mr. Tilak

upheld the asssassination of Afzulkhan by Shivaji, whether it was planned deliberately or not, Shivaji was a great character, but Mr. Tilak honours him because of a great crime which he committed.

2926. Do you think you were answering the question? Let me put it again in rather a different form. It is fair to say, is it not, that it is a disputed, and therefore I suppose a disputable question, whether Shivaji's conduct on this famous occasion was properly described as treacherous or not?—I believe it is disputed.

2927. And it is not the only historical event, the merits of which people dispute about long after it happened?—Probably not.

2928. I should just like to ask you about this one other matter and then think I have put to you all the questions I need put. In your study of Indian institutions and movements you have learnt, have you not, that cow-protection was far from being a new thing in the late '90's of the last century?—A new thing in India?

2929. Yes?—There was no protection in India in the '90's.

2930. I was asking you, using the expression "cow-protection"——?—I beg your pardon, I had not heard the "cow."

2931. What I am asking you is this. You would agree, would you not, that the movement for cow-protection in various parts of India has existed for a very long time?—It was an institution which existed for some time —a very harmless one itself.

2932. I am not asking for the moment whether it is harmless, or not. A cow may be both a harmless and a necessary animal. The fact is, is it not, that in many parts of India the movement for cow-protection was a thing that had existed for generations?—Yes, I think that is so.

2933. I suppose one may say roughly wherever the Hindu population and religion which treats the cow as sacred was prominently represented?—Yes.

2934. It is part of the Mohammedan religion, is it not, as far as you know, that people must kill cows?—A great many Mohammedans do believe that on a certain day in their year—on certain religious festivals, the cow

or other animal—cows especially—should be sacrificed. I will not say that it is part of the religion as preached by Mohammed and as practised by Mohammedans in India.

2935. And this accounted for the difficulty of reconciling a claim of the Mohammedans for silence on the road outside the mosque and the claim of another religion as part of its religious ceremonial, to maintain a procession with music. That is one of the standing difficulties, is it not, of Indian administration—as wide apart as Ceylon right up to the north?—Ceylon is not in the Indian administration.

2936. I stand corrected. But even outside India, in Ceylon, it is true, is it not?—I do not know. All I say is that Ceylon is not in India.

2937. I think the late director of the Foreign and Imperial Department of "The Times" must know rather more than that about Ceylon. I leave out Ceylon if you do not know it there. Do you really tell me that you do not know in the case of Ceylon, that there have been very serious riots between Mohammedans and persons who insist upon carrying on religious processions with music past their mosques?—I do not say I have not heard of it, but you are asking me about India from Ceylon, and I say that Ceylon is not in India.

2938. Let us leave out Ceylon; I agree I put my question inaccurately. It is true, is it not, that this is a standing, one may almost say, a secular difficulty in different parts of India of reconciling the claims of a religious community that admits music while it passes a mosque with the claim of the Mohammedans that their own religion should be respected to the point of stopping them?—No doubt it is one of the many difficulties of administration, but that never became acute until Mr. Tilak took up the question in Poona.

2939. Do you really tell the Jury, with your study of Indian affairs, that the only cases in which riots have arisen from that controversy are occasions that can be traced to Mr. Tilak?—I will say that the question never became really very acute to my knowledge until it was taken up in Mr. Tilak's papers.

2940. These riots, in the instances we have been

considering in Bombay, occurred nearly a year before the thing ever reached Poona at all?—But the acuteness of the conflict, as dealt with by the administration with regard to the administrative measures taken, only arose then.

2941. Do you realise that in these great books that have been prepared, many extracts from which have been read, that the extracts are extracts out of Mr. Tilak's papers, not before the Bombay riots, but after them?—The Bombay riots had not primarily to do with the question of the music.

2942. I have given some study to the Bombay riots, and I just ask you this. Whatever may be the more obscure or distant causes, what happened was this, was it not—that a large number of Mohammedans rushed out of their temple armed with sticks?—I must really refresh my memory if you want me to tell you exactly the details.

2943. If it is not in your mind that is quite enough for me. I think those are the only questions with which I need trouble you.

Re-examined by Sir EDWARD CARSON.

2944. Sir Valentine Chirol, as regards the festivals of Shivaji, did you ever make any objection anywhere in your book as to the religious nature of them?—No.

2945. And was the matter that you wrote of in your book that Mr. Tilak had turned it into a political matter?—That is so.

2946. And you give the quotations in your book of the parts which you considered were calculated to incite to crime?—Yes.

2947. Let me call your attention to them. Take, for instance, page 46. There is a meeting at which Mr. Tilak was in the chair, and a Brahmin professor got up to vindicate Shivaji's bloody deed, and this is quoted from the "Kesari" or "Mahratta"?—It is quoted, I think, from the "Kesari."

2948. "Who dares to call that man a murderer who, when only nine years old, had received divine inspiration not to bow down before a Mohammedan Emperor? Who dares to condemn Shivaji for disregarding a minor duty in the performance of a major one?" Had Shivaji

committed five or fifty crimes more terrible, I would have been equally ready to prostrate myself not once but one hundred times before the image of our Lord Shivaji . .

Every Hindu, every Mahratta, must rejoice at this spectacle, for we too are all striving to regain our lost independence, and it is only by combination that we can throw off the yoke." Was that the teaching, as you point out in your book, to which you attached importance as inciting to violence?—Certainly.

2949. There is another passage, but I do not read it for the moment. I want to put it as shortly as I can. You were asked by my learned friend a few moments ago as to whether you drew a difference between incitements to sedition and incitements to murder?—Yes.

2950. Or to language calculated to incite to murder? —Yes.

2951. Did you consider, and do you now consider, that the articles in the "Kesari" and the "Mahratta" were calculated to incite to murder?—Yes.

2952. When you drew those deductions had you before you all the considerations of the conditions of India? —Yes.

2953. And which you had yourself explored?—Yes.

2954. And looking now on all that has transpired do you see any reason for drawing different conclusions? —None whatever.

2955. When you say that the language of these papers and these festivals were calculated to incite to murder had you also before you Mr. Justice Davar's judgment?—Yes,

2956. Will you look at page 55 of the book: "Such was the position when, on June 24, 1908, Tilak was arrested in Bombay on charges connected with the publication in the 'Kesari' of articles containing inflammatory comments on the Muzaffarpur outrage in which Mrs. and Miss Kennedy had been killed by a bomb —the first of a long list of similar outrages in Bengal. Not in the moment of first excitement, but weeks afterwards, the 'Kesari' had commented on this crime in terms which the Parsee Judge, Mr. Justice Davar"—that is the man who tried Mr. Tilak?—Yes.

2957.—" described in his Summing-up as follows

'They are seething with sedition; they preach violence; they speak of murders with approval; and the cowardly and atrocious act of committing murders with bombs not only meets with your approval, but you hail the advent of the bomb into India as if something had come to India for its good.' The bomb was extolled in these articles as 'a kind of witchcraft, a charm, an amulet,' and the 'Kesari' delighted in showing that neither the 'supervision of the police' nor 'swarms of detectives' could stop 'these simple playful sports of science.' Whilst professing to deprecate such methods, it threw the responsibility upon Government, which allowed 'keen disappointment to overtake thousands of intelligent persons who have been awakened to the necessity of securing the rights of Swaraj'" ?—Yes.

2958. That last part is quotation?—Yes.

2959. You had that before you, and as we know now, and it is not the fact, that that judgment still remains?—: It still stands.

2960. It still remains the record?—Yes.

2961. You were asked as to whether you did not know at the time of the Jackson murder, and for a year and a-half before, that Tilak was in Mandalay in gaol?—Yes.

2962. Now will you turn to page 57, where you state that: "The agitation in the Deccan did not die out with Tilak's disappearance, for he left his stamp upon a new generation, which he had educated and trained. More than a year after Tilak had been removed to Mandalay, his doctrines bore fruit in the murder of Mr. Jackson, the collector of Nasik—a murder which, in the whole lamentable record of political crimes in India, stands out in many ways pre-eminently infamous and significant." Therefore, you do state in your book to whoever reads it as a fact, that Mr. Tilak had been removed to Mandalay, and was there when the murder took place?—Yes, quite so, and the heading of that page is "The Aftermath."

2963. So I see. Now, as regards Kanhere's confessions, the point was raised by my learned friend that there is some inconsistency in the confessions. My Lord, I propose to read now the whole of this first confession which has been commented upon.

Mr. Justice DARLING: At what page is it?

2964. SIR EDWARD CARSON: It is at page 325 of the pink book. Confession under Section 164 of the Penal Code. There he states his name: "My father's name is Lakshman Kanhere. By caste I am a Kokanast Brahmin. My age is 17 years. My occupation is that of a student, Art School, Aurangabad. I am an inhabitant of Aurangabad. Q. Where did you come from to-day? —From Aurangabad, in the morning. I started from Aurangabad by railway train and came at half-past three o'clock in the afternoon. I came to Nasik. Q. What did you do after coming into the city?—I came to the Ghat. I drank tea. There I got a theatre handbill. Q. Then what did you do?—I came to see the drama. Q. What was your object in coming to see the drama?—At the Ghat I came to know that Mr. Jackson was coming to see the drama. I, therefore, came to the theatre. Q. With what object did you come to the theatre for Mr. Jackson?—I came with the object of murdering him. Q. What was the reason of murdering him?—Mr. Jackson practised oppression upon the Rayat"— that is the subjects, is not it?--Yes.

2965. "I therefore murdered him. Q. With what did you murder him?—With a revolver. Q. How many revolvers were there with you and where did you get them from?—There were two revolvers with me. I bought those revolvers for 35 rupees at a Haras, that is, at an auction sale, at Aurangabad. A Mussulman held a Haras. I don't know his name. At Aurangabad many weapons are sold at a Haras. Q. How did you indentify Mr. Jackson?—I was present at the time of the criminal proceedings against Savarkar. At that time I had seen Mr. Jackson. Since that time I have been able to recognise him. Q. Have you any other companions?— No. Q. What is the reason of your coming to Nasik this very day?—During the Christmas holidays I got down here for no particular reason. I have no house here. Nor have I any relations or connections. Q. When did it come into your mind to kill Mr. Jackson?—Since the time Savarkar was sentenced I intended to kill him. I formed the intention alone. There are no persons at Aurangabad who can form the intention of committing murder. Q.

Have you anything more to state?—I have of my own accord committed the murder of Mr. Jackson. I have not committed it at the instigation of any one else. Q. Is there any connection between you and Savarkar?—I met Savarkar once at the Manmad Station. That was all my acquaintanee with him. I was seated at the station. He then came to me and asked me: 'To what part of the country do you belong?' I said: 'I am a student. Please help me.' Then he said: I will see later on.' That was all the conversation that took place between him and me. Q. Are you making this confession in writing voluntarily? Or has anybody held out any threat to you?—I have made this confession voluntarily. No one held out any threat to me. There was my one paper in my pocket. I have written the whole account thereon in the balbodh character, in pencil. Q. Where did you get the cartridges from?—The Arab from whom I bought the revolver and cartridges. I bought the cartridges from him. I was practising with the revolvers at Aurangabad. I was doing so in the jungle. Q. With what objeet were you practising with the revolver?—Since the disturbance at Calcutta I have been engrossed with the desire of practising with revolvers. I used to go to school nominally. Q. How many shots did you fire at Mr. Jackson and from where did you fire?—I sat where there is a board near the door of the theatre. After Mr. Jackson entered I jumped down from the board and fired one shot behind him, and the rest from in front. Q. Where do you live at Aurangabad?—I stay in a Maradi's house in Shroff Lane. I don't know his name. Q. Who provides you with food?—I was getting a scholarship of four rupees from the school. Q. Where are your parents?—I don't know where they are. I left them in my boyhood while I was 8 years old. I was for two or three years in the house of my maternal uncle Govind Bhaskar Barve residing in Nizam's Hyderabad. I lef this house four or five years ago. Q. Since when did you get the idea of committing the murder?—On reading newspapers it appeared to me that Sahibs were practising oppression and they committed the murder of us poor people. I, therefore, formed this

intention. It has no connection with any secret society whatever. Q. Did you want to commit the murder of anyone else to day?—No, I wanted to murder myself. Q. Your eye was wounded. What was the wound due to? —After I fired the revolver in the theatre I got the wound as someone struck me with a stick while I was being caught or after I was caught. Q. Have you voluntarily given in writing what you have given in writing above? —I have given this writing voluntarily. I have not made this confession in consequence of anyone having held out any inducement or promise to me. Anant Lakshman Kanhere. The date is the 21-12-09 ten minutes past twelve at midnight, at the theatre." Then the magistrate adds: "I believe this confession was voluntarily made. It was taken in my presence and hearing and was read over to the person making it and admitted by him to be correct and it contains a full and true account of the statement made by him. At the time of reading the confession four armed police were near the prisoner to guard him as he looked a desperate man and was likely to become violent." Then, my Lord, there is the other confession. Have you the second confession before you, of which I have already read parts to the Jury?—That is the confession dated 31st January, 1910?

2966. Yes, it is in the pink book at page 328. It gives, without going into the whole of it, a very long and full account of this man, Kanhere's association with other people; that is the point my friend made in connection with the murder. Then he says: "I questioned Ganu" 'Why are you killing Mr. Jackson causelessly? Why don't you kill Davar who punished Tilak?' Then I said to him: 'If you are going to send me, I will first kill Davar's son; for then he will understand what grief on account of one's children is; because he has got Tilak removed from the midst of his children and has sentenced him to transportation for six years.' Ganu said: 'I cannot tell you anything just now.'" After going through a good deal of detail this is the passage I want to read with reference to my friend's question: "Did the police beat you?—No. Q. Why, then, are you telling all this?—The whole of our treasure-house burst. If these two Aurangabad boys had not come with me and

if Ganu Vaidya had not been in our league, then I would not have told anything in connection with this matter even on pain of death. But now the treasure-house having burst, I am helpless. . . . . I and Ganu came from Manmad to Nasik at 8.30 o'clock at night, when I reached the station Daji had come to the station to post the letter to Anna. I asked Daji: 'Is not Anna come yet?' Then Daji said: 'After this letter reaches him, he will come the day after to-morrow in the morning.'" That is the reason he states why he is telling this. Then later on he says: "Then I said, 'It is my determination that my body should wear itself out in the country's cause.' Then I and Anna went on by the road to the jungle. And these people were following us. After going a mile and a-half I and Anna sat down at a certain place. Anna asked me: 'How did your mind become so ready?' I said: 'By reading the book on Mazzini my mind became ready.' He asked: 'Where did you read this book?' I then said: 'Gangaram had brought that book from Yeola.' He asked me 'Who is Gangaram?'"

Then, my Lord, there is a passage a little later on in which he says: "When I, Ganu Vaidya, and Dattu Joshi were sitting, I asked him: 'Why have you come?' Then he said: 'I am going to Pen—Karjat. If any one from your part of the country is coming, send him with me.' I asked him: 'What for?' then he said, 'There are our Bheel people there, I am going to see them. And we will also teach the man from your part of the country the chemistry of bombs.' There are Bheel people—in the hilly district. I don't know what they have to do with the matter. There is a bomb factory. I said: 'We have got no man to send with you.'" Then later on, my Lord, passing on through another day: "Did you know anything personally about Mr. Jackson?—I personally knew nothing about him. Q. If Karve had told you, would you have killed any Sahib without making any inquiries whatever?—Yes, I would have killed; for I have full confidence in Karve because he was at any rate more educated than I. Q. How did the idea of killing Sahibs first come into your head?—It appeared to me that our people do not get justice from Sahibs. I have read many

instances of zulum in the "Kesari," "Rashtramat," "Kal," and other newspapers. I think that by killing Sahibs we people will get justice. I never got injustice myself nor anyone else whom I know. I now regret having killed the kind Mr. Jackson. I killed a good man causelessly. I feel sorry for it."

Mr. Justice DARLING: He said earlier that he really fixed on Mr. Jackson because of the part he had taken in the prosecution of Savarkar.

Sir EDWARD CARSON: Yes, my Lord, that I read.

2967. I want to ask you a few questions about one or two things Sir John Simon asked you yesterday. As regards the connection of Kolhapur and the Shivaji Maharaj, if I may call them so, you devote a whole chapter explaining that in your book?—I devote a whole chapter explaining the position of Kolhapur.

2968. Your Lordship will find that at page 64, I am not going to read it. It says: "It is not after all in British India that part of India which we directly administer that the Brahminical and reactionary character of Indian unrest, at any rate in the Deccan, can best be studied. There it can always be disguised under the 'patriotic' aspects of a revolt against alien rule. To appreciate its real tendencies we must go to a Native State of the Deccan about 100 miles south of Poona. Kolhapar is the most important of the Native States under the charge of the Bombay Government, and its ruler is the only ruling Mahratta chief who can claim direct descent from the great Shivaji, the Shivaji-Maharaj whose cult Tilak made one of the central features of his political propaganda." Then it comes on describing, this is only to show he considers the destinies of that State as being under the Shivaji Maharaj.

Mr. Justice DARLING: There is a passage at the top of page 65 where he deals with the Maharaj of Kolhapur, of whom Sir John Simon asked. He says: "He takes a keen interest in the administration of his State, and has undertaken"——

Sir EDWARD CARSON:—"at no small cost to his Exchequer, one of the most important irrigation works yet attempted in any Native State. But he committed what Tilak and his friends regarded as two unforgivable

offences; he fought against the intolerance of the Brahmins, and he is a faithful friend and ally of the British Raj. Hence they set in motion against him, the descendant of Shivaji, in his own State, exactly the same machinery of agitation and conspiracy which they have set in motion against British rule in British India. It is a curious and most instructive story. There had been long minorities in Kolhapur, and especially during the more or less nominal reign of the present Maharajah's predecessor, Shivaji IV, who ultimately went mad. The Prime Minister a Chitpavan Brahmin of Ratnagiri, acquired almost supreme power in the State, and filled every important post with his fellow caste men, of whom he introduced more than a hundred into the public service. Under Chitpavan rule the interests of the people of the soil were systematically neglected in Kolhapur, as they had been throughout the Deccan in the later days of the Chitpavan theocracy at Poona, and privileges and possessions were showered upon members of the favoured caste. On his accession in 1894 the present Maharajah appointed as his Prime Minister, with a view to very necessary reforms in the administration, a Kayastha, Prabhu, Rao Bahadur Sabnis, who, though a high caste Hindu, was not a Brahmin. There has long been great rivalry between the Brahmins and the Prabhus, who belong mostly to the moderate progressive school of Hinduism. The appointment of Mr. Sabnis, besides portending unpalatable reforms, was therefore in itself very unwelcome to the Kolhapur Brahmins, amongst whom one of the most influential, Mr. B. N. Joshi, the Chief Judge, was a personal friend of Tilak Consternation increased when the young Maharajah announced his intention of promoting to positions of trust such non-Brahmins as should be found capable of filling them and actually started educating non-Brahmins for the purpose. In order to put pressure upon their ruler, the Brahmins had recourse to one of the most powerful weapons with which the semi-religious, semi-social structure of Hinduism has armed them. They questioned his caste and refused to recite at certain religious ceremonies in his family the Vedic hymns, to which as a Kshatriya, i. e. as a member of the twice born caste ranking next to the Brahmins His

Highness claimed to be traditionally entitled. The stalwart Brahmins of the Deccan allege, it seems, that in this Kali Yuga or Age of Darkness, there can be no Kshatriyas, since there is no room for a warrior caste in the orthodox sense under an alien rule, and that therefore the Hindus who are neither Brahmins nor pariahs can at best be Shudras—a 'clean' caste, but not even entitled to wear the 'sacred thread reserved for the highest castes.'" Then it goes on to discuss how he remained firm against Tilak and against the Brahmins who were putting those matters forward.

2969. Have you kept up an acquaintance and a knowledge of this Maharaj?—Yes.

2970. Ever since?—I think I made his acquaintance first when I went to the Imperial Durbar in 1903, and since then I have always been on terms of friendliness with him.

2971. I do not know exactly the suggestion, but is there any suggestion that could be made that he in any wise patronised the tricks of Tilak in relation to Shivaji?—Certainly not.

2972. Mr. Justice DARLING: See the way the paragraph winds up: "To the present day the feud continues, and the present Shankaracharya is not recognised"—is that the Maharaj?—No, that is a religious authority, a great spiritual authority.

2973. "Is not recognised by the Poona school of Brahmins. Nor is he likely to be, as he has had the unique courage publicly to condemn as a Brahmin the murder of Mr. Jackson by Brahmins"?——

2974. Sir EDWARD CARSON: Then he says, my Lord, lower down, page 67: "Only in Kolhapur has a Brahmin, qualified to speak with the highest religious authority in the name of Hindu sacred law, been found to have in this respect the courage of his convictions. This Brahmin was no less a personage than the Shakaracharya of the Karveer Peetha, who took the very noteworthy step of issuing a proclamation solemnly reprobating the murder committed by a Brahmin 'in the holy city of Nasik' as 'a stain on the Brahminical religion of mercy emphatically preached by Manu and other law-givers.' After paying a warm tribute to

Mr. Jackson's personal qualities and great learning, and quoting sacred texts to show that 'such a murder is to be condemned the more when a Brahmin commits it,' and renders the murderer liable to the most awful penalties in the next world, the proclamation proceeded to declare that 'His Holiness is pleased to ex-communicate the wicked persons who have committed the present offence, and who shall commit similar offences against the State, and none of the disciples of this Peetha shall have any dealings with such sinful men.'" Therefore you tell me, I understand, that as far as the Shivaji celebrations were concerned at Kolhapur they had nothing in common with what Tilak had intended them to be elsewhere?—No.

2975. And you have not anywhere in the book said otherwise?—No.

2976. If you will turn please to page 49, I am coming to the passages that were put to you about the Tai Maharaj case. I do not know what the point was quite. You were asked whether in the issue in "The Times" I think my learned friend said of June 19th——

Sir JOHN SIMON: 27th July.

2977. Sir EDWARD CARSON: Whether you had not published the account of this case without these words: "Though as recent developments have shown quite prematurely"?—Yes.

2978. As a matter of fact, Sir Valentine, do you know that the Judgment of Mr. Justice Chandavarkar was not delivered until the month of September?—Yes. It is stated so in my note.

2979. And was it in consequence of that Judgment having been delivered in the meantime that you made the change between the article and what is in your book?—That is so.

2980. You were asked as to where you got the news or the knowledge of this Judgment and you said you thought you got it as a bit of news?—I said I could not swear to it but that I thought it had come to me in the ordinary course of publication.

2981. Have you since yesterday looked up "The Times" to see whether you could find that?—I have.

2982. Have you got it?—Yes.

2983. What is the date of "The Times"?—Thursday, October 20th, 1910. (Handing newspaper.)

2984. This is what "The Times" of Thursday, October 20th, 1910, says: "The Tai Maharaj Adoption Suit. Judgment against Mr. Tilak. On the Appellate side of the Bombay High Court on September 24th, Justices N. G. Chandavarkar and Heaton delivered judgment in the adoption appeals in which Mr. B. G. Tilak, now undergoing imprisonment for sedition, and Mr. G. S. Khaparde were closely concerned. The lower Court had declared in appeal No. 1 that one Jaggannath had been adopted in June, 1901, at Aurangabad by the widow of the late Bala Maharaj. For the widow, Tai Maharaj, it was contended that this adoption was invalid, her will having been dominated by the undue influence brought on her by Tilak and Khaparde, executors under her husband's will, in the matter, but that the adoption by her a few days later of Bala Maharaj was valid. Mr. Justice Chandavarkar, in course of his judgment reversing the decisions of the lower Court, said that on the one hand they had a young, inexperienced widow, with a right of ownership but ignorant of that right, and led to believe that she was legally subject to the control of the executors of her husband's will as regarded the management of the estate which she had by law inherited from her son, prevented from going to Kolhapur even to attend a marriage in a family of relations, anxious to adopt a boy from Kolhapur as far as possible. On the other hand, they had two men of influence learned in the law, taking her to an out-of-the-way place ostensibly for the selection of a boy and then, as it were, hustling her thereby representing that everything was within their discretion, and thereby forcing her to adopt their nominee. In these circumstances they came to the conclusion that the adoption of the fourth Plaintiff was not valid, because it was brought about by means of undue influence exercised over Tai Maharaj by both Tilak and Khaparde." Is that practically what is in your book?—In the note.

2985. We have given in the exact judgment——

Sir JOHN SIMON: The note goes on with three lines which are not there at all.

Sir EDWARD CARSON: I meant the note of the Judgment.

2986. In the account you give here at page 49 have you said anywhere that anything was decided against him finally except this matter of Mr. Justice Chandavarkar?—No.

2987. You were asked by my learned friend as to whether this man was ever indicted for forgery. Do you know as a matter of fact whether there is such a proceeding as an indictment in India—what we call an indictment?—No; I do not even know what we call an indictment in this country.

2988. You said you used the word indictment in a technical sense. Do you know as a fact whether there is a Grand Jury and a Bill presented before them?—No, I do not.

Mr. Justice DARLING: We still call the documents indictment in this country, although Grand Juries are abolished for the time being.

Sir EDWARD CARSON: The name goes on, my Lord.

Mr. Justice DARLING: Perhaps I ought to tell the Gentlemen of the Jury what indictment is. An Indictment, Gentlemen, strictly speaking, is a Bill of Indictment; it is a charge written out, formulated, and taken to the Grand Jury saying: I charge or indict So-and-so for such and such an offence. The Grand Jury would consider it, then they would vote, and either make up their minds that there was a charge for the Assize Court, or that there was not. If they came to the conclusion there was, they would bring in a True Bill; then it is a Bill of Indictment found by the Grand Jury, and upon that there is the trial. If it was a case of murder, and there was a Coroner's Inquest, the Coroner might commit him, and in that case there would be no need for the Grand Jury, and even if it went before the Grand Jury and the Grand Jury found no True Bill, he would still be tried on the Coroner's Warrant. Since the War, in order to save the time of business people, Grand Juries have been abolished, or suspended; but the word "indictment" still goes on, though it is really by the direction of the magistrate who commits

to the Judge who sits at the Assize.

2989. Sir EDWARD CARSON: Sir Valentine Chirol, as a matter of fact, do you know that the District Judge had ordered inquiries to be made against Mr. Tilak into charges of perjury, forgery and corruption?—Yes, that was one of the phases of this very long complicated litigation.

2990. And that, you say, ended in a Judgment in his favour?—Yes.

Sir EDWARD CARSON: Your Lordship will find at Volume 4 of the Record of the District Judge, at page 136: "In the District Court of Poona. Suit for revocation of probate. Application No. 112 of 1901, Shri Sakwar Bai alias Tai Maharaj, widow of Shri Wasudeo Harihar Pandit alias Bala Maharaj against Bal Gangadhar Tilak, Ganesh Shrikrishna Khaparde, Shripad Sakharam Kumbhojkar, Balwant Martand Nagpurkar. Order under Section 476 Criminal Procedure Code. Whereas this Court is of opinion that there is a ground for inquiry into the following offences referred to in Section 195 Criminal Procedure Code and committed by Defendant. No. 1, Bal Gangadhar Tilak committed before this Court or brought to its notice in the course of this suit for revocation of grant of probate, namely, offence under Section 211 Indian Penal Code, 193 Indian Penal Code, and 196 or 471 Indian Penal Code. This Court under the provisions of Section 476 of the Criminal Procedure Code sends the case for inquiry to the nearest magistrate of the first class, and further orders that the accused, Bal Gangadhar Tilak, do give sufficient security, namely, his own recognisances for Rs. 10,000, and two securities for Rs. 5,000 each for his appearance before such magistrate tomorrow, 5th April. The various offences disclosed in this suit committed by accused, Bal Gangadhar Tilak, are more particularly set out in the Appendices A, B, C, D, which are to be taken as part of this Order." Then: "20th July, 1901, at Poona. False charge of an offence made with intent to injure (Section 211, Indian Penal Code) in that the accused, Bal Gangadhar Tilak, at Poona on or about the 20th July, 1901, falsely charged B. M. Nagpurkar with criminal breach of trust in respect of ornaments entrusted to him

and instituted or caused to be instituted criminal proceedings against that person in the Court of the City Magistrate Poona with intent to cause injury to him and others. Between 29th June 1901 and 25th July 1901 at Poona. Fabricating false evidence for the purpose of being used in a stage of a judicial proceeding." Then it points out the proceeding. Then comes the important one, having regard to my learned friend's question: "Or in the alternative forgery, Section 465 Indian Penal Code, by fraudulently altering the said document as above described."

Mr. Justice DARLING: Then a little before: "Fabricating false evidence for the purpose of being used in a stage of judicial proceeding in that the accused Bal Gangadhar Tilak between 29th June 1901 and 25th July 1901 with the purpose above mentioned made or caused to be made the following alteration and interpolation in the account of expenses." Then: "Erasing the words 'of Brahmins at the time when decision was passed of,' and substituting the words and false entry 'for' and 'for making his verbal gift and acceptance in the presence of four people' in order to make it appear 'adoption' expense was incurred on 27th June, 1901 at Aurangabad and fabricated this false entry with the intention set out in Section 192 and the first part of Section 193 Indian Penal Code." That would be forgery, and as it is in connection with an account of expense incurred, it is very difficult to see how it can be consistent with common honesty.

Mr. SPENCE: He was not tried.

Mr. Justice DARLING: Sir Edward Carson was saying he was sent for trial.

Sir EDWARD CARSON: I do not know why my friend interrupts. I am putting the document. Sir Valentine Chirol was cross-examined about the use of the word "indictment," and I am showing now the exact things he said in his book were, what the magistrate committed to inquiry as regards this man were these different charges.

Mr. SPENCE: As long as it remains clear he was committed for inquiry, and not put on his trial.

Sir EDWARD CARSON: I said so.

Mr. Justice DARLING: Before this case is over we are certain to hear something said in criticism of the word "indictment." I explained to the Jury an indictment is a Bill put to the Grand Jury; it is a Bill of Indictment, and it comes to be tried according to whether the Jury find a True Bill or no True Bill.

Mr. SPENCE: I do not think my learned leader has any intention of criticising.

Mr. Justice DARLING: Sir Edward Carson can say when Mr. Ashton, the District Judge, referred these charges to be investigated by another Judge on the ground of forgery, fabricating documents, and so on, it is not libellous to call that thing an indictment.

Sir EDWARD CARSON: He does not say anywhere that he was convicted; on the contrary, he says the case ended in his favour, which would be the layman's way of describing a thing, whether it was tried, or whether there was a verdict. Then, my Lord, after the forgery charge, there are also the words "Corruptly using or attempting to use." Sir Valentine Chirol uses the word there "indicted" on charge of forgery, perjury and corruption, and your Lordship sees it is in the magistrate's reference.

Mr. Justice DARLING: "Corruptly using or attempting to use as true or genuine evidence known to be false or fabricated," and then at Poona: "Corruptly using or attempting to use as true or genuine evidence a document which he fabricated by filing," and so on.

Sir EDWARD CARSON: Then my Lord, you will find: "At Poona in his depositions between 15th November 1901 and 3rd April 1902 intentionally giving false evidence in a stage of judicial proceeding. District Court; Section 193 Indian Penal Code."

Mr. Justice DARLING: Sir John Simon said that he was tried for perjury. He was not tried for forgery or corruption, but it is perfectly plain by this the case was sent to the magistrate to investigate as to whether he had been guilty of forgery, corruption and perjury.

2991. Sir EDWARD CARSON: However, Sir Valentine Chirol, you say all these proceedings ended in his favour?—In his favour.

2992. It was suggested by my learned friend, Mr.

Justice Chandavarkar's Judgment did not involve a perjury charge. If your Lordship will look at page 415 of the Pink Book, the Judgment in the Privy Council, your Lordship will see there they quoted the learned Judge who gave Judgment. The Judgment of the Court was delivered by Lord Shaw, and we know it represents the Judgment of the whole; they only give one Judgment. At page 413, after going through some of Mr. Justice Chandavarkar's Judgment, there is this passage which I want to call your Lordship's attention to. Lord Shaw says: "The conclusion just made is of the most serious character amounting to a plain judicial finding of conspiracy and of perjury." That is his description of Mr. Justice Chandavarkar's Judgment. Your Lorship will see he says: "It is in these circumstances that their Lordships have viewed with surprise the charge which is made not only against the trustees, but against the whole body." Then he quotes Mr. Justice Chandavarkar. Then at the end of the small print he says: "The conclusion thus made is of the most serious character, amounting to a plain judicial finding of conspiracy and of perjury." Then, my Lord, at page 415 you will find this passage in the middle of the page: "Their Lordships have observed with regret and with surprise that the general principle and the specific statutory provisions have not been followed. The verdict of the High Court is an inferential verdict—none the less sweeping on that account—but an inferential verdict actually of perjury. What are the premises upon which this inference proceeds? In no inconsiderable degree they consist of documents, statements, even turns of expression, which are used to confound the spoken word. Had the safeguards set up by the law with respect to the use of documents been observed? Not at all. Not only have documents been used for the purpose of contradicting witnesses without obeying the injunctions prescribed by law, but the inference thus derived, and improperly derived, from these documents has resulted, as stated, in an inferential verdict of perjury." Your Lordship will see it is stated three times by the Privy Council.

Mr. Justice DARLING: They make it perfectly plain that Mr. Justice Chandavarkar had found him

guilty of perjury.

Sir EDWARD CARSON: That, of course, merely becomes material on the question of fair comment in the last three lines at page 340 of "Indian Unrest": "Mr. Justice Chandavarkar is a Hindu Judge of the highest reputation, and the effect of this Judgment is extremely damaging to Tilak's private reputation as a man of honour, or even of common honesty." The Privy Council says: "Mr. Justice Chandavarkar has practially found him, Tilak, guilty of perjury and conspiracy." That is the whole of that.

2993. You were asked as to the sources from which you got your information, and you said you got some from official sources, as I understood, some from semi-official sources, and you had large numbers of cuttings and translations of the "Kesari" and "Mahratta" before you?—Yes.

2994. The ones we have here were put in in evidence at a Commission in India?—Yes.

2995. Was it ever suggested any of them were fabricated?—No.

2996. Or was there any suggestion made there of the translations being incorrect?—No.

2997. Sir John Simon asked you with reference to whether there was a different practice during the plague in Bombay and in Poona about searches by soldiers in the houses, and you told him yesterday that the soldiers were not used, as I understood, in Bombay?—I believe that they were not.

2998. And you said that you were satisfied with the reasons for that?—The reasons I heard seemed to me satisfactory.

2999. Well, what were they?——

Sir JOHN SIMON: My Lord, I submit that this gentleman cannot give evidence of the reasons that he heard. I asked him as a matter of fact whether the practice was different.

Mr. Justice DARLING: Can you refer me to the page?

Sir EDWARD CARSON: He can only say that by hearsay.

Sir JOHN SIMON: It is at page 332, my Lord. I

asked him at Question 2735 whether in his study of Tilak's articles he had seen any "pointing out that in Bombay searches were conducted without the use of soldiers," and he said Yes. Then—it is not any question of mine—he is not content with saying Yes. He says: "Yes, I do know that, because I made inquiries as to the reasons for the difference, which seemed to me satisfactory. Q. You satisfied yourself, did you not, that the fact was that in Bombay soldiers were not used in that way?". That is addressed to what had appeared in the "Kesari," and he replies "Yes."

Mr. Justice DARLING: All these questions begin from Question 2731: "Had you before you any article?"

Sir JOHN SIMON: Yes: "Had you before you, for example, any article on the plague which urged upon the readers of the 'Kesari' that strict administration, search of their houses, and so on was necessary?—I knew that at the beginning Mr. Tilak had written for a short time in that sense." Then, as your Lordship says, I put a series of questions each beginning with "or."

Mr. Justice DARLING: It must be prefaced by "Had you before you, for example, articles explaining."

Sir JOHN SIMON: It means, had you before you articles pointing out that in Bombay searches were conducted without the use of soldiers. The witness answers "Yes." Then he adds: "I do know that, because I made inquiries as to the reasons for the difference, which seemed to me satisfactory." Then I do not pursue that, I ask: "You satisfied yourself, did you not, that the fact was that in Bombay soldiers were not used in that way?" and the witness answered "Yes." Your Lordship will perhaps remember when I was proposing to ask Mr. Tilak about this contrast and his view on it, objection was taken, no doubt rightly because your Lordship upheld the objection, and I did not pursue the question.

Sir EDWARD CARSON: On which matter?

Sir JOHN SIMON: On this very question. I did not pursue the matter with this witness. Your Lordship had already ruled we could not go into an inquiry as to all these secondary matters. The passage I am referring

to I can refer to by the page and number. It is page 95—it is a long time ago, because my friend's cross-examination of the Plaintiff is interposed—it is, as a matter of fact, the second day. Perhaps I might begin on page 94. My friend, Mr. Spence, has been directed to keep closely to statements that cannot be proved by merely reading the article. Then my friend says: "If your Lordship pleases." Then to the witness: "Where did the plague begin at this period? Where did it break out?—It broke out in Bombay. Q. At about what period?—Six months earlier than in Poona. In 1896 it broke out in Bombay, and at Poona it broke out at the end of the year, or early in 1897. Q. Do you know what steps were taken to deal with it in Bombay?—Yes." Then Sir Edward Carson interposes to take this objection: "I object to going into an inquiry of the steps taken at Bombay, as it is impossible for us to follow that." Your Lordship then ascertains that the witness was in Poona. Then Sir Edward gives another reason: "And besides, my Lord, I respectfully submit that what they did in Bombay, or in any particular place, must depend upon the size of the place, and everything else, and has nothing whatever to do with what they did in Poona, where the conditions may be entirely different." And finally your Lordship ruled: "If you want to go into the difference between what was done in Bombay and what was done in Poona, if objection is taken it must be done strictly, and the witness being in Poona cannot tell us what was done in Bombay. In fact we know exactly how it is, because in the beginning of his evidence some time ago he said that what he wrote in his paper as to what was done in Bombay was got from correspondence which the newspaper had, but he cannot give that as evidence of his own knowledge." Sir Edward Carson again takes the objection it should not be evidence: "If the same Government likes to take different methods of dealing with it in any one place from the other it cannot have any relevance to say whether it is right or wrong." In view of that objection that matter drops.

Mr. Justice DARLING: In ruling I say this: "I do

not say it could not possibly be evidence, but if it was, what was done in each place must be strictly proved."

Sir JOHN SIMON: Quite. My Lord, I submit that this question now proposed to be put to Sir Valentine Chirol, professing to be based on a question asked by me in cross-examination, travels altogether outside the question I put. I put the question first: Was Sir Valentine aware that articles had pointed out that in Bombay searches were conducted without the use of soldiers? That was my question; he replied: "Yes" and I ascertained the fact that in Bombay the soldiers were not used.

Mr. Justice DARLING: I will tell you where. I think you must be a little careful on this. When you say you ascertained the fact, your question was: "You satisfied yourself did you not that the fact was that in Bombay soldiers were not used in that way?" It is not the same thing as saying the fact was ascertained. What he said in answer to you was he satisfied himself they were not used.

Sir JOHN SIMON: My submission is merely this—whatever your Lordship rules, it will proceed on that basis, of course—my submission is that the inqury here—which is long enough in all conscience—does not include an inquiry into the expediency or otherwise of the Government adopting one course in one place and another course in the other. My point is not that one was expedient and the other inexpedient as an issue in this trial, but when Mr. Tilak pointed to the distinction, and himself argued that the other was the better course, he was well founded in this, that in fact they were pursuing a different method in Bombay. Otherwise, of course, it would not be necessary to inquire into a rather elaborate question of administration. On those grounds, I submit, the question proposed to be put is not admissible in re-examination.

Mr. Justice DARLING: Let me hear your question, Sir Edward.

3000. Sir EDWARD CARSON: Did you ascertain, Sir Valentine, the reason of the different practice which you say, in answer to Sir John Simon, prevailed

in Bombay?——

Mr. Justice DARLING: Do you object to that, Sir John?

Sir JOHN SIMON: Inasmuch as Sir Valentine can only have ascertained from hearsay, I do object.

Mr. Justice DARLING: My difficulty is on the form of your own Question 2736: You satisfied yourself."

Sir JOHN SIMON: If your Lordship thinks it convenient for the witness to say Yes or No, I shall not object.

Mr. Justice DARLING: Just put the question again, Sir Edward.

3001. Sir EDWARD CARSON: Did you ascertain the reason as to why a different practice prevailed in Bombay and in Poona as to searching houses with soldiers?—Yes.

3002. What was that?—

Sir JOHN SIMON: One moment.

Sir EDWARD CARSON: May I say a word on this —my friend has spoken 25 minutes. My friend has referred to what took place at the opening, when your Lordship ruled that this could not be taken unless proved by direct witnesses. Then, my Lord, on the 8th day my learned friend reintroduces it all again, and he asks: You satisfied yourself, did you not, that the fact was that in Bombay soldiers were not used in that way? That would be only by hearsay, because this was years after the thing had occurred. Then he says: I having made the suggestion that there was this difference by making a suggestion to the Jury that the practice in Poona was improper, because they did not have it in Bombay—that can be the only meaning—I shall not allow the witnesses to say what was the reason that he ascertained it was different.

Mr. Justice DARLING: What do you say to that, Sir John?

Sir EDWARD CARSON: It is an ordinary case of a question in cross-examination not to allow an incorrect inference to be drawn.

Sir JOHN SIMON: I can put the answer, I trust, in a shorter time than 25 minutes. I submit there is really

no connection between the question that Sir Edward wishes to put and the question which I put in cross-examination. The object of the inquiry as I made it is not to show that one practice is good and the other is bad, but to show that when Mr. Tilak's paper asserts that there is a difference between the two and criticises it, be it all good or bad, he is basing himself on a difference which in fact existed.

Mr. Justice DARLING: On the understanding that that is all that it means, and that is all that is established, that things were not done in precisely the same way in Poona as they were done in Bombay in regard to the employment of soldiers, then I disallow any further question about it.

Sir EDWARD CARSON: I understand, my Lord, there is to be no inference drawn.

Mr. Justice DARLING: There can be no inference drawn: it is simply that the two processes were not the same.

Sir EDWARD CARSON: Then I do not see the object of my friend's objection.

3003. Now, Sir Valentine Chirol, you were cross-examined at considerable length about an amendment that was made in the Pleadings in this action. Had you anything to do with that?—Nothing.

3004. Do you know anything about it?—No.

3005. Do you understand why it was made, or did you leave these matters to your Counsel?—Entirely. I was in India at the time.

3006. A passage was read to you which had been amended. I am not going into the original form in which it stood as you say you know nothing about it, but here is the justification put in the Particulars: "The murderer of Mr. Rand and Lieutenant Ayerst declared that he had committed the murder for the benefit of the people, as the murderer of Mr. Jackson declared that he thought that by killing Englishmen his people could get justice." Do you know anything of where those words were taken from?—I think they were taken from Chaphekar's own confession.

3007. You were asked as regards the doctrines of Tilak. I will take the exact words you use in your book.

This is not complained of as a libel as has been so often pointed out: "The same young Brahmin who had recited the Shlok, which I have quoted above, at the great Shivaji celebration—declared that it was the doctrines expounded in Tilak's newspapers that had driven him to the deed"?—Yes.

3008. Have you got the confession before you at page 376 of the Pink Book?—Yes.

3009. It is about three-fourths of the way down that page: "I went to Poona with the whole family. Then the operations for the suppression of the plague were commenced and Mr. Rand was appointed the head of the Plague Committee. In the search of houses a great zulum was practised by the soldiers and they entered the temples and brought out women from their houses, broke idols, and burnt pothis." Were those in your opinion the doctrines inculcated by Tilak?—Yes, part of them.

3010. Was that what you refer to in your book?—That is what I had in my mind.

Mr. Justice DARLING: "We determined to revenge these actions, but it was no use to kill common people. and it was necessary to kill the chief man. Therefore we determined to kill Mr. Rand, who was the chief."

3011. Sir EDWARD CARSON: And your Lordship will find later in the same confession he was asked, did he ever speak to Rand, and he said "No my house was not entered and I was never disturbed." That is at page 379. (To the Witness): Now you were asked some questions about a correspondence that is in this Pink Book. As far as I can see, it really has nothing to do with you at all. I will try and make it clear. Will you turn to page 316. which is a letter, part of which my learned friend read, from somebody of the name of Robertson, secretary to the Government, to Mr. Tilak at Bombay?—Yes.

3012. Had you anything to do with that letter? Nothing whatever.

3013. Or did you know anything about it?—Only when it was published in Mr. Tilak's own papers.

3014. I do not know whether the suggestion is that you instigated the Government not to give Mr. Tilak

these documents?——

Sir JOHN SIMON: I certainly do not make that suggestion.

Sir EDWARD CARSON: Then I do not know what the suggestion is. Will you make it quite clear?

Sir JOHN SIMON: It is as well that I should make it clear.

Mr. Justice DARLING: I thought that we really cleared it up yesterday when I called attention to the kind of postscript to the letter in which he goes on, although he has not even been asked to tell Mr. Tilak of documents that had been sent to the other side: "I cannot let you have the documents that are mentioned there because they are confidential documents, but there are certain documents which are not confidential, they have been sent to the other side and you can have them."

Sir EDWARD CARSON: I suppose this was got in with some object, and I should like, with your Lordship's permission, to read the next letter in the book. It is the same date, 28th July, on page 317.

Mr. Justice DARLING: It is from the same Mr. Robertson to Mr. Tilak.

Sir EDWARD CARSON: Yes, my Lord. "Sir,—I am directed to acknowlege the receipt of your letters of the 4th and 17th July, 1917, calling for the production of certain correspondence and documents, in original, before the Commissioner appointed in connection with your case against Sir Valentine Chirol. Q. In reply I am to inform you that in no case can the original records of Government be allowed to go on the file of the case. Certified copies of such documents in the possession of Government, as Government may allow to be produced, will be prepared on payment of the usual copying fees, and these certified copies will be produced before the Commissioner when a subpœna describing the documents of which production is desired has been served. 3. I am, therefore, to inquire whether you are willing to pay the usual copying fees and, if so, to say that certified copies of: (1) All the correspondence between Messrs. Little & Co., as Solicitors for Sir Valentine Chirol, and Government; and (2) All

the other documents specified in your two letters under reply will be prepared, and these copies will be produced before the Commissioner on receipt of a subpœna addressed to Mr. Dashrath B. Rath, clerk in the Judicial Department, Bombay." Your Lordship sees from the correspondence between Sir Valentine Chirol's solicitors and the Government they produce all the documents asked for.

Sir JOHN SIMON: Would you mind referring to the one that follows on page 318? I do not ask you to read them all.

3015. Sir EDWARD CARSON: Then I will have to read the answer to that. I would like to ask one question on that. (To the Witness): As a matter of fact, did the Government official appear in Court and produce all the documents that were called for?—Yes.

Sir EDWARD CARSON: My Lord, my learned friend wants me to read the next one from Mr. Tilak: "I beg to acknowledge the receipt of your letters. You say in your letter of the 28th July that documents and papers referred to in your letter, paragraph 3, clause (1, 2, 3) and the annual reports on the Native Press referred to in Clause 4, also the papers in paragraphs 3 (5), (7) and (9) of the said letters are 'confidential' and inspection thereof cannot be granted." Then on the next page he says: "Under the circumstances, I beg to enquire which of the following methods Government will be willing to adopt in reference to documents which are described as confidential in your letter. (i) Whether Government will be pleased to transmit all such documents as are claimed to be confidential to the Right Honourable the Secretary of State for India so that Plaintiff will issue a subpœna to His Lordship to produce the same before the London High Court, or (ii) whether Government enable you to bring the said documents in the High Court before the Commissioner and leave them with the record of the Commission in sealed covers to be transmitted to the London High Court where the question of the validity of the objection will have to be decided in order that the said documents may be available there for the inspection of the Court there."

Mr. Justice DARLING: With regard to issuing a subpœna to the Secretary of State, both of you, who have

been Attorneys General, must know perfectly well that the Secretary of State would, upon that, send an officer to say that he had got the documents with him, and he objected to produce them in the public interest.

Sir EDWARD CARSON: Yes, my Lord, we have advised that course.

Sir JOHN SIMON: That happened, my Lord, in a case which your Lordship tried in which I appeared.

Mr. Justice DARLING: Yes.

Sir EDWARD CARSON: I think that is all I have to ask you, Sir Valentine Chirol.

Viscount SANDHURST, sworn.

Examined by Sir ELLIS HUME-WILLIAMS.

3016. You are a Member of the Grand Cross of the Star of India, the Indian Empire, and a Member of the Privy Council, and at the present moment you hold the office of Lord Chamberlain?—Yes.

3017. In 1894 you were, I think, Under Secretary of State for War?—I was.

3018. And in December of that year you were appointed Governor of Bombay?—I was.

3019. I think you had had some experience of India, and you had been there before?—I had travelled there.

3020. And having been appointed in December, 1894, you remained Governor of Bombay for your full term of five years?—Yes, the full term.

3021. With the result that you were Governor of Bombay during the plague in Poona?—I was, that is to say during that part of the plague, because it went on for a long time after.

3022. The plague, I think we know, started in 1896?—Yes.

3023. When the plague broke out did you yourself take personal charge of the work in connection with the plague that had to be carried out?—I did.

3024. You had, I think, received advice from people with regard to this question,—from doctors and other experts on the subject of the necessity of segregation?—Yes, a general plan was suggested by those whom I call experts.

3025. Of course that entailed the use of people to make a house-to-house inspection?—Yes, that was part

of the programme.

3026. Did you yourself go down to Poona?—Yes, I visited Poona certainly on two occasions. The plague began in Bombay and then it visited Poona. I went to Poona certainly on two occasions, and I think more frequently, but we will take it at two. I certainly visited Poona on two occasions, as I think it has been read out from a speech of mine, but I think I must have been there more frequently than on the two occasions.

3027. There was a plague as we know in Bombay and in Poona?—Yes.

3028. And hospitals were constructed, I suppose, for the reception of the patients?—Hospitals were constructed for the reception of the patients, but of course a plague hospital is not what we recognise in this country as being places like St. Bartholomew's Hospital or Charing Cross Hospital. There is a large building, perhaps with beds arranged in it, well ventilated and so on, for the particular purpose.

3029. Did you yourself during this outbreak of plague go into these hospitals where these stricken people were, and stand by the bedside and inspect them for yourself?—Yes, I was by the beside I should think of hundreds of plague patients, to put it mildly.

3030. Suffering from plague at the time?—Absolutely suffering from plague at the time. I made it my duty to do what we should call walk the hospitals.

3031. And you providentially escaped infection?—I providentially escaped infection. What I thought was good enough for the young medical officers I thought was good enough for me.

3032. In Poona there was established, I think, a Plague Committee?—There was.

3033. *Ad hoc*, for the purpose of dealing with the plague?—Yes.

3034. Whom did you appoint as chairman of it?—Mr. Rand.

3035. What position did he hold at the time of his appointment to the chairmanship?—Mr. Rand was either an acting collector or a collector in the Indian Civil Service. I should think he probably had had some 12 or 14 years' service and was an experienced officer.

3036. Was it a responsible position?—Yes, very.

3037. Requiring a certain amount of courage?—It required courage and patience, in fact I can hardly imagine a more difficult position.

Sir JOHN SIMON: My Lord, I must interrupt. I want your Lordship's direction. I submit that evidence such as I am sure Lord Sandhurst will be willing to give, and give with great authority as to the excellence of Mr. Rand's experience and character, is not relevant to any issue in this case. I am loth to interpose, because Mr. Rand is dead, and everybody wants to see that there should be no unnecessary debate about it, but with great respect I submit that this is not relevant to any issue in this case. This is an action for libel—six separate libels on the Plaintiff—with regard to which justification is pleaded. This evidence that we are now hearing is no part of the particulars of any justification of any one of the six libels. I should be very sorry to suggest that the evidence that Lord Sandhurst is now being asked to give is relevant to this case, and I should be very sorry to suggest that we should canvass the character of these distinguished persons.

Sir ELLIS HUME-WILLIAMS: In my submission this goes directly to one of the issues which the Court has to try, for this reason. Mr. Tilak in his articles has described Mr. Rand as a tyrant and oppressor, to use the terms with which the Court is now familiar, and Mr. Tilak when cross-examined says that the murder of Mr. Rand is to be attributable not to his description of him, and not to his articles, but to Mr. Rand's acts of oppression, and, that being so, it becomes in my submission material to inquire whether or no Mr. Rand was a tyrant and oppressor, and whether he brought upon himself the fate which befell him, and whether it was not the fact that his fate was due to the articles written by the Plaintiff. Therefore in my submission it becomes very material to ascertain what was the conduct of Mr. Rand in fact, and to know whether the statements made about him by the Plaintiff were true or not.

Sir JOHN SIMON: That is really putting, I do not say the Plaintiff, but it is putting the Plaintiff's Counsel in an almost intolerable position. It is no issue in this

case which I have to discuss or canvass whether or not this distinguished official had the character of a man in issue, and I would never for a moment consent in my duty as an advocate to ask questions about the character and services of a man who died in the service of his country.

Mr. Justice DARLING: That may be, but what Sir Ellis Hume-Williams suggests is that as part of the justification the Defendant has to show that what happened to Mr. Rand was the result of the Plaintiff's articles, and, in order to show that what happened to Mr. Rand was the result of the Plaintiff's articles, he says I have shown that those articles denounced him as a tyrant and as a man who seized people whom he knew not to be suffering from plague and segregated them in the camps, and so on, and part of the way to show that he was not a tyrant is to show what sort of a man he actually was.

Sir JOHN SIMON: I have made my submission to your Lordship.

Mr. Justice DARLING: Will you refer me to that part of the Pleadings on which you base your objection?

Sir EDWARD CARSON: With great respect, there is also something your Lordship ought to read with reference to this in the Shorthand Note. It is when I was cross-examining Mr. Tilak on the Fourth Day at page 161. Your Lordship will see Question 1159: "Now I want to ask you this: Was it your opinion that it was the oppression of the administration of Mr. Rand during the Poona plague that led to his murder?—I think it was the harshness of the measures he adopted which led to the murder—his insisting upon these measures. Q. You see that the book says it was the doctrines expounded in Tilak's newspaper that had driven him to the deed. Do you deny that?—Which page is that? Q. Page 48, the same passage: 'He declared'—that is the murderer declared—'that it was the doctrines expounded in Tilak's newspapers that had driven him to the deed'?—I deny that. Q. Now let me just see. Did you from the month of April down to the murder of Mr. Rand state over and over again in your papers that in the search of houses a great tyranny was practised by the soldiers?—I did say that. Q. Did

you say that in the search of houses a great tyranny was practised by the soldiers?—In the search of houses? Yes, I did say that. Q. Did you say that they entered the Temple and brought out women from their houses, broke idols and burnt books? You said all that?—Yes, it is a fact. Q. Is that exactly what Chaphekar said in his confession?—It might be."

Mr. Justice DARLING: Then at the bottom of the page he says: "Yes, it is a fact."

Sir EDWARD CARSON: Yes, my Lord, "It is a fact."

Mr. Justice DARLNIG: And you are going to ask Lord Sandhurst whether it is a fact or not.

Sir EDWARD CARSON: Yes, my Lord. What Mr. Tilak says is that it was actually acts of oppression which caused the murder. What we want to show, and what we wish to have before the Jury, is that it was not the acts of oppression, but that it was the newspapers.

Sir ELLIS HUME-WILLIAMS: My Lord, the statement in the Pleadings is at page 8 of the Particulars: "The Plaintiff rather than Kanhere was the real author of the murder, which resulted from the doctrines promulgated by the Plaintiff. It was merely the story of the Poona murders of 1897 over again. The murderer of Mr. Rand and Lieutenant Ayerst declared that he had committed the murder for the benefit of the people, as the murderer of Mr. Jackson declared, that he thought that by killing Englishmen his people would get justice. As the murder of Mr. Rand and Lieutenant Ayerst followed on publications by the plaintiff exciting dissatisfaction against the British Government, endeavouring to excite his countrymen to imitate the example of Shivaji and overthrow that Government, and defending and justifying political assassination, so the murder of Mr. Jackson followed on publication by the Plaintiff exciting sedition and advocating violence, hailing the bomb, which had then lately been introduced into India, and used to murder two English ladies, as a charm, or amulet, and defending it as a legitimate weapon of political reform." To which the Plaintiff answers that it is the fact that the murder was due entirely to the conduct of Mr. Rand.

Sir JOHN SIMON: I feel my own position very

acutely, but that will not alter the proper ruling your Lordship gives, but it does justify me in asking for your Lordship's help and assistance in the matter. Your Lordship notices the plea of justification here nowhere makes it a part of the pleaded case that Mr. Rand was in fact a most exemplary and considerate official. I may say at once that if I had seen that that was part of the justification sought to be proved in this case, I certainly should have made it my business very early in the case to let the Jury understand that I did not maintain the contrary view about a man who suffered as Mr. Rand suffered. But that is not the point. The point of the justification is that they say: "We rely upon the articles which you wrote and we call attention to the character of those articles, and we invite the Jury to infer in the light of those articles that those articles were morally responsible for the murder of Mr. Rand." I have raised no objection at all to my friend making the most of that, because so far as we know Chaphekar never read a single line of the "Kesari," but that is all comment. It is a wholly different matter to say: I am not content with my Particulars; what I propose to do is to call a very distinguished public servant, the superior officer of this dead officer, and ask him to give evidence as to whether the dead officer was a man of this character or not."

Mr. Justice DARLING: Sir John, my difficulty is this: that the Plaintiff himself has said on oath, and in his articles, that the real origin of all the trouble was Mr. Rand, who was a man of a domineering and tyrannical character, who set out to impose the Government which was stigmatised as a tyrannical Government upon the people.

Sir JOHN SIMON: He did.

Mr. Justice DARLING: That is the inference he is asking the Jury to draw, and that is why he says these things; that it was in consequence of that that Mr. Rand was murdered by Chaphekar, and that he might have been murdered by anyone. He, the Plaintiff, thereupon says, I desire to show that the Defendant is not telling the truth about this when he says that he attacked Mr. Rand unjustifiably, and that he killed Mr. Rand, a tyrant, without any justification, but, as a matter of fact, Mr.

Rand was carrying out the orders of the Lieutenant Governor in a very humane and proper way. The two things are inconsistent, you see.

Sir JOHN SIMON: I quite see that, my Lord, and, of course, so far one must accept your Lordship's ruling, but I wish your Lordship to remember that though a plaintiff in a libel action may be cross-examined, and may give an answer which the defence does not accept, and I am not in the least obliged to accept the correctness of his answer, that is a very different proposition from saying that everything that the Plaintiff in the action denies in cross-examination, whatever it is, may be proved affirmatively by the Defendant.

Mr. Justice DARLING: I should not say for a moment that simply because the Plaintiff stated something as a fact you could call evidence to prove that it was not the fact, but it seems to me that this is not in that position. The Plaintiff complains that the Defendant published a libel about him, and the Defendant says: "I have not published a libel about you. What I said about you was true. You improperly accused Mr. Rand, who was a man of high character, and doing his work in a very considerate way, of being a tyrant, and you said he was persecuting people and establishing what we call zulum or tyranny. I can show, so far from this being a libel, it is perfectly true, and I begin by showing that Mr. Rand was not doing the things you accused him of, but was behaving quite properly. That is where I begin, and having said that, I shall say: Now, as Mr. Rand was doing these things that the Plaintiff says he was, so far from it being a libel about the Plaintiff, I told the truth about him." That is the way it strikes me. That is the way the argument goes. I think I must admit the question.

3038. Sir ELLIS HUME-WILLIAMS: If your Lordship pleases. (To the Witness): I was just asking you whether or not you had made inquiries and taken precaution, before you appointed Mr. Rand to this office, satisfy yourself that he was a proper person to fill it?—I did. Mr. Rand's record was, of course, well known to me as being Governor of the Presidency, as was the case with all the officers.

3039. During his operations as Chairman of the Plague Committee in Poona were you in constant touch with him?—I heard from him daily.

3040. And I suppose when you went to Poona you saw him?—Unquestionably.

3041. And you had, I suppose, daily reports as to the progress of the plague, and as to how things were going on?—Yes, and of any incidents that might have occurred, and also the daily death rate was reported to me.

3042. Did it become necessary in your judgment to ask the soldiers to carry out these house to house visits at Poona?—Yes, the reason for employing the soldiers was that we wanted if possible an efficient organisation. I had confidence that with the officers and the non-commissioned officers in charge those duties would be properly carried out.

3043. And did you ask the soldiers to volunteer for the work?—I cannot absolutely say that I asked the soldiers to volunteer because that would have been done through the military authorities, who would deal with the soldiers. They knew my requirements.

3044. Was the house to house visitation carried out to your knowledge by British soldiers?—Yes, I believe so.

3045. I will not ask you what they were, but I suppose instructions were given to them as to how they were to carry out their duties?—Yes, that would have been done by the Chairman of the Committee. I did not issue the actual instructions myself.

3046. Were these houses which had to be entered for finding the patients insanitary houses?—They were very small, very dark, and they were described as being excessively dirty.

3047. What did they use on the walls of these houses?—The walls for the most part, I think I am correct in saying, and the floors, were usually cow-dunged.

3048. Does that retain the germs of plague?—So we were informed.

3049. From time to time did any complaints reach you as to the conduct of any persons who were carrying out their work in Poona?—There were complaints, no doubt, but I referred them always for investigation.

3050. Do you know if any of these complaints which you referred for investigation turned out to have any foundation?—I would not say that any complaints had no foundation, and I have never said so, but the more serious complaints I denied emphatically at the time.

3051. How did the soldiers do their work?——

Sir JOHN SIMON: May I ask your Lordship to rule about this. One is very glad at any time to hear reports as to the excellency of our soldiers' behaviour, but with great respect applying the laws of evidence in this case and having regard to the issues, is that a question which Lord Sandhurst can answer? He is the head of a great Government.

Mr. Justice DARLING: If it were directed to this: "So far as you know of your own personal knowledge, how did they behave?" That would be admissible.

Sir JOHN SIMON: Yes.

3052. Sir ELLIS HUME-WILLIAMS: So far as you know of your own personal knowledge will you tell us? You had been down to Poona?—Yes.

3053. And you saw the soldier at work there, I suppose?—Yes, I think I can say that.

3054. So far as it is within your knowledge, how did the soldiers carry out the work that was entrusted to them?—The reports which I received——

Sir JOHN SIMON: Is that evidence, my Lord?

3055. Mr. Justice DARLING: No. (To the Witness): Tell us from your own knowledge. Put the reports out of your mind.—I do not understand, my Lord, what position I am in.

3056. Mr. Justice DARLING: When you visited the place, did you see the soldiers at work?—I cannot say that I actually followed their work.

Mr. Justice DARLING: It seems to me that we really need not go very deeply into this, because a long time ago there was read a report from Lord Sandhurst himself—a kind of vindication of Mr. Rand. When Mr. Rand was murdered Lord Sandhurst made a speech in Council.

3057. Sir ELLIS HUME-WILLIAMS: Be it so. May I put it in this comprehensive form? (To the Witness): Are the facts which you stated in your speech accurate?—Yes, unquestionably.

Mr. Justice DARLING: Where is the speech?

Sir EDWARD CARSON: It is at page 533 of the first volume, my Lord.

3058. Sir ELLIS HUME-WILLIAMS: I would like to read a few words of that speech. I will not read it all of course. It is at page 541. It is headed "The Work of the Soldier": "Now I must say a word about the soldiers, regarding whom these calumnies have been sown broadcast—I should think, as a matter of fact, they have commanded very little respect and credence—but they have been made. It is not to be supposed that when these charges are made, when they are the subject of questions in the House of Commons, that commanding officers can sit queitly by and hear the characters of their men impugned or that the private soldier himself does not feel the very greatest and gravest indignation. And I should like to ask those who lightly made these charges to ask themselves this question—'Are not commanding officers jealous to a degree of the reputation of the men whom they command?' And I know full well they would be the first to single out and punish any individuals who had been detected in crimes of this description. And is not the private soldier equally proud of his own reputation and that of his comrades and his corps? All I can say is that from the inquiries I have made, I believe that nowhere in the world could operations of this description have been carried out by any class of people more ably, more thoroughly or more considerately or humanely than by the body of soldiers employed in plague work in the City of Poona. I tender the thanks of the suffering public of the Bombay Presidency to all the civilian officers,' and so on. Is that an accurate description of the facts that were within your knowledge?—I considered it so at the time, and I am still of that opinion.

3059. So far as you know is there the least foundation for describing Mr. Rand as he was described in the articles which have been read as a tyrannical oppressor of the people?—No, none whatever.

3060. Or the faintest foundation for the suggestion which the Plaintiff himself says is a horrible one if untrue, that well people were taken to the hospitals in

order to swell the number of patients to be put into the return of the work done by the Government?—No, that is not true.

3061. I think he has not yet succeeded in finding the facts which he says justified that statement of the plague report, but do you think there is any foundation whatever for it?—No, I cannot believe it.

3062, Were you as the immediate superior of Mr. Rand satisfied with the way in which he carried out his duties?—Yes, I was.

3063. I do not know if I put this direct question to you. I would like to put it again if I have not. Did any complaint reach you from the hospitals as to the treatment people had been subjected to at the hands of the soldiers. Of course, you were not there yourself?—No. On the contrary, whenever I went to the hospitals, in Poona I am speaking of, I always found that people were extremely grateful for what was done for them, and, further than that, we had the evidence of what was brought by way of gratitude by these suffering people's relations. Everybody who has been to India knows that one of those methods is giving flowers in various degrees, and these little offerings of flowers used to come to the nurses and attendants and doctors, and so on, which was great proof, to my mind, that the greatest considerations and kindness had been shown. Might I add something to what I said if I am quite correct, because, naturally, I do not wish to give any answer that is not quite correct. I told you, my Lord and Gentlemen of the Jury, just now, that I had been by the bedside of hundreds of these patients; that was perfectly true, but I am rather afraid that the answer might be taken to include Poona alone. I was including at the moment the whole Presidency which was from time to time inflicted with this terrible disease.

3064. If anybody had that impression, it must have been owing to the clumsy way I put the question, and not your answer. Would your Lordship be good enough now to turn to the Shorthand Note, the Fourth Day, page 198. I want to found a question upon an answer given there by the Plaintiff, dealing with Professor Gokhale. It is Question 1717a. My learned friend, who

was cross-examining, says this: "At page 526 there is a reference to it, my Lord. The 'Mahratta,' of course, seizes upon it at once. 'We hear that Professor Gokhale, who returned from England yesterday'—that is in August—'acknowledges without reserve that he was misled by the Poona correspondents to either withdraw or account for their statements, and in the event of their failing to do this, he will take the earliest opportunity of making a full statement to Government of the circumstances under which he was misled, and of offering an apology for having been the means of circulating a report for which he is now satisfied there was no foundation." The Court will remember the incident relating to the accusations made about people being segregated during the plague. Now, my Lord, it goes on in this way. He saw nothing of the work. Then about two-thirds down the paragraph I was just reading my learned leader quotes from an article in the "Mahratta." and this is what is said: "Then at page 531 you will find an editorial note in the 'Mahratta' on the 8th August: "Professor Gokhale's Apology.' What passed between the professor and the head of the Bombay Police, who was the earliest to welcome him, and also claimed the best part of his attention even while on the steamer, is more than we or anybody can say. But the letter of apology which Professor Gokhale addressed to Lord Sandhurst on the 1st August perhaps betrays the secret." I propose to ask Lord Sandhurst to produce the letter which he received from Professor Gokhale. (To the Witness): Have you got it here?—Yes.

Mr. SPENCE: I object to the production of this letter. I submit it does not deal with the issue. The question is whether these are correct comments or not, and that is all that is in question.

Sir EDWARD CARSON: Your Lordship will find all these articles about this matter commence at page 525 in the first volume.

Mr. Justice DARLING: I must deal first with this objection. I see what the Plaintiff writes is: "Professor Gokhale's letter is an interesting exposition of a series of psychical phenomena. It is as touching to the reader as humiliating to the writer. That is Professor Gokhale's

letter?—Yes." Then it goes on: "The long and the short of the letter is this." It seems from this that the Plaintiff himself is giving his account of this letter, that is to say—"that it is an interesting exposition of a series of psychical phenomena." On what ground do you suggest, Mr. Spence, that after that it is not legitimate to produce the letter?

Mr. SPENCE: I have not had an opportunity of reading this, and I was not aware of this latter part.

Mr. Justice DARLING: I have had an opportunity of reading it while other people were asking questions. I understand your objection is withdrawn?

Mr. SPENCE: Yes, My Lord.

3065. Sir ELLIS HUME-WILLIAMS: Now will you produce the letter?—Yes.

3066. Is that the Government record?—This is the record in my own private collection of papers.

3067. Does that contain a print of the letter? This contains a print of the letter.

Mr. Justice DARLING: Where shall I find this?

3068. Sir ELLIS HUME-WILLIAMS: Lord Sandhurst produces it. (To the Witness): The original letter, I suppose, would be in the care of the Government of India?—That I cannot say. It is stated that a copy was sent for publication to the "Manchester Guardian."

Mr. Justice DARLING: That must be where Mr. Tilak got it from, because it mentions that here: "As to the interview reported in the 'Manchester Guardian' while he admits it is mainly correct he points out in one passage there is a serious inaccuracy," and so on. It is what the Plaintiff himself wrote. Do you really take this objection, Mr. Spence?

Mr. SPENCE: I think I must, my Lord.

Mr. Justice DARLING: On what ground?

Mr. SPENCE: That the original is not tendered.

Sir ELLIS HUME-WILLIAMS: The original would not be a public document. Lord Sandhurst received the letter, and he is entitled to look at the print and give his recollection of the letter, I submit.

Mr. Justice DARLING: The objection is that the best evidence of what was in the letter is the letter itself; and that is a copy.

Sir ELLIS HUME-WILLIAMS: The answer to that is that this is a document in the possession of the Government of India, and this is the gentleman to whom the letter was addressed, and he is entitled, in my submission——

Mr. Justice DARLING: The letter is now, I suppose, in the possession of the Government of India or destroyed.

Sir ELLIS HUME-WILLIAMS: It also appeared in the "Manchester Guardian."

3069. Mr. Justice DARLING: If it is the same as appeared in the "Manchester Guardian" then you have got it. (To the Witness): Do you know, Lord Sandhurst, what has become of the original letter of which that is a copy?—I cannot say what has become of the original letter. I have had that letter and other letters printed in a series of documents which belong to me.

3070. Sir ELLIS HUME-WILLIAMS: What did you do with it? Did you leave it with the Government of India or what?—I should think the original is amongst my private papers. It is addressed to my private secretary as you see.

Sir ELLIS HUME-WILLIAMS: Yes. It is a letter which the Plaintiff has himself commented upon.

Mr. Justice DARLING: The difficulty is that the one he commented upon was the one in the "Manchester Guardian," and that which you have there is not the "Manchester Guardian" one.

Sir ELLIS HUME-WILLIAMS: It is not. Would your Lordship turn to page 198 of the Shorthand Note? I do not think that is so. "You will find an editorial note in the 'Mahratta' on the 8th August: 'Professor Gokhale's Apology.' 'What passed between the Professor and the head of the Bombay Police, who was the earliest to welcome him, and also claimed the best part of his attention even while on the steamer, is more than we or anybody can say. But the letter of apology which Professor Gokhale addressed to Lord Sandhurst on the 1st August perhaps betrays the secret.'" That is not the letter that appeared in the "Manchester Guardian." That is a letter sent from Professor Gokhale to Lord Sandhurst containing an apology.

Mr. Justice DARLING: That which you have there

is not that letter. It is a copy of the letter. I am afraid it is a good objection.

Sir ELLIS HUME-WILLIAMS: Even if I prove that I cannot produce the original?

Mr. Justice DARLING: If you can prove that the original is destroyed then a copy is evidence.

Sir ELLIS HUME-WILLIAMS: If I prove that it is destroyed or in the power of somebody——

Mr. Justice DARLING: But you cannot prove it is destroyed. Lord Sandhurst says that he thinks it is probably amongst his private papers. It is a good objection. I use the word "good" in a strictly technical sense. I say it is valid objection.

3071. Sir ELLIS HUME-WILLIAMS (to the Witness): Do you think you could get at it?—I am very doubtful if I could get at it.

Sir ELLIS HUME-WILLIAMS: I am sorry, because if we had seen it we should have seen whether Tilak was speaking the truth as to whether it betrays a secret.

(Adjourned for a short time.)

3072. Sir ELLIS HUME-WILLIAMS: Lord Sandhurst, were certain questions which had been put in the House of Commons in 1897 referred to you for answer?—

Sir JOHN SIMON: If my learned friend is seeking now to introduce material from proceedings in the House of Commons, whatever they may be, I submit he has made no foundation.

Sir ELLIS HUME-WILLIAMS: I am going to make the foundation by putting in Hansard.

3073. Mr. Justice DARLING: So far there is nothing objectionable. (To the Witnes): This is coming to a critical point, Lord Sandhurst; do not answer the questions at once. You will notice if objection is taken.

Sir ELLIS HUME-WILLIAMS: I propose to put in and to read some questions and answers in the House of Commons which are reported in Hansard in the volume which I have before me, and then I propose to ask the witness a question upon them.

Mr. Justice DARLING: What question do you propose to ask?

Sir ELLIS HUME-WILLIAMS: I propose to ask whether the answers given in the House of Commons are

true in substance and in fact, and whether the facts upon which they are founded were supplied by him?

Sir JOHN SIMON: I submit that is not admissible on any ground.

Sir ELLIS HUME-WILLIAMS: May I just state they are questions relating to the subject in issue in this action?

Mr. Justice DARLING: They cannot relate to the issue in the action. They may relate to some facts which are material in the action.

Sir ELLIS HUME-WILLIAMS: I should have said facts which are in issue. I propose to read, at any rate, which, with respect, I submit I am entitled to do, the questions and answers in Hansard.

Mr. Justice DARLING: On what ground do you say you can read questions and answers reported in Hansard?

Sir ELLIS HUME-WILLIAMS: I would submit questions and answers which are reported in a public document are cogent evidence, if your Lordship thinks, when you hear them or look at them, that they are questions which have a bearing on the issue.

Mr. Justice DARLING: Do you suggest, because the question is asked in the House of Commons, it is the slightest evidence, or that there is anything in it at all?

Sir ELLIS HUME-WILLIAMS: No, my Lord, but the answer may be material.

Mr. Justice DARLING: The answer can only be useful provided the facts disclosed in the answer are true and material. Then that is not the way to prove them. Simply to say a Minister was asked such and such a question, and gave such and such an answer does not prove anything.

Sir ELLIS HUME-WILLIAMS: When there is a public matter being debated in the House of Commons, I submit if it has any bearing on the case which is being tried in Court, the questions put and the answers given are material facts which the Court should take into consideration.

Mr. Justice DARLING: It cannot depend on the nature of the answer; it must be that any answer which is given in the House of Commons is evidence in a Court

of Justice.

Sir ELLIS HUME-WILLIAMS: May I put it in this way, my Lord? There is an issue here, as to whether or no these facts which appear in the articles written by the Plaintiff are true or not. We say that they are justification of what has been said in the book about the Plaintiff; the Plaintiff says they are not, because of certain facts, namely, that he was not responsible, that his articles had no connection with that which occurred but other circumstances are responsible for them. That being so, I submit that questions put in the House of Commons on those very subjects, and answers supplied by the Government of the day, must have some bearing upon the issue which your Lordship is trying, namely, whether or no statements made by the Defendant are justified. It must be part of the justification, at least that is what I submit.

Sir JOHN SIMON: There is no reference to Hansard in your Particulars of Justification.

Sir ELLIS HUME-WILLIAMS: There is no necessity for that. The Particulars of Justification merely say that the facts stated are true, and they are true for such and such a reason. That has to be proved by evidence, and part of the evidence that has to be given in support is, in my submission, the fact that at the vital period questions were put in the House of Commons and answered with respect to them, that is before the publication of the book.

Mr. Justice DARLING: What is the point of their being in the House of Commons? How does that help you?

Sir ELLIS HUME-WILLIAMS: Because it is a public tribunal, questions in which, and the answers, are open to the author of the book.

Mr. Justice DARLING: He does not profess to have been quoting from those questions and answers; he does not say: My information is got from questions and answers in the House of Commons on such and such a day.

Sir ELLIS HUME-WILLIAMS: He does not profess to be quoting from a great number of authorities put in. The question is whether he is justified in the statements

he made, or whether they were wild statements unfounded in fact. If they were before the public, it must be material on the question of whether or not he was justified in the statements he made.

Mr. Justice DARLING: It only comes to this: somebody else made the same statement. It may be the person who made it is a very exalted official.

Sir ELLIS HUME-WILLIAMS: Supposing the facts alleged in the answers are stated by the Secretary of State for India, and that these facts are before the writing of the book, and bear out the statement made in the book, does your Lordship think that ought to be excluded?

Mr. Justice DARLING: He has not said: "I made those statements because I have read what was said by the Secretary of State for India."

Sir ELLIS HUME-WILLIAMS: He was not asked the specific question. He says: "I had information before me on which I founded the statements."

Mr. Justice DARLING: He does not say that is part of the material.

Sir ELLIS HUME-WILLIAMS: He has not said so, because the specific question was not put to him, and in my submission-in-chief he need not say everything was before him at the time he wrote the book. The issue is whether it was true, and if information is available to him at the time one of the steps in the proof must be the fact that this was available information given in such a public place as the House of Commons. It goes to the issue of whether or no what the Defendant has said is justified by the facts available to him at the time.

Mr. Justice DARLING: I do not think available is enough. If there were evidence that he actually had that information and founded what he wrote upon it, you would be a step nearer.

Sir ELLIS HUME-WILLIAMS: I put it in this way, my Lord, the Defendant says what I said is true. The Plaintiff in the box says No, what I said in my articles is true, they were not the cause of the murders, the cause of the murders was the general sense of discontent among the population at the acts of the British Government. Now, my Lord, supposing questions are put upon that very subject in the House of Commons, and answers are

given stating the facts as they are alleged to be at the time, could any Court properly exclude that as evidence in justification of the truth of the statements made in the book? How can it be, with great respect?

Mr. Justice DARLING: What do you say to that, Sir John Simon?

Sir JOHN SIMON: My Lord, I fail wholly to understand on what principle this is admissible as evidence-in-chief offered by Lord Sandhurst after all that has happened in the trial. The House of Commons, my learned friend says, is a public place. I do not know how that may be; certainly Hansard is not an official publication. Let me assume statements are made in a public place, and somebody asked this, that and the other, and Lord Sandhurst was present and answered in person. I submit that the fact Lord Sandhurst did so could not be proved by him in this case. He has given evidence of what he knows, and I am waiting to ask questions about it; but it is a wholly different thing to say: Now I propose to read proceedings from Hansard and ask whether an answer given is in accordance with your view, or based upon your opinion. That is not, I submit, admissible on any principle whatever.

Sir ELLIS HUME-WILLIAMS: However singularly apt the illustration may be, I do submit in this case I am entitled to put before the Court any public source of information available to the author at the time he wrote the book. My Lord, if this is a statement made in public, reported in the public journals, reported in Hansard, if it goes to the question which your Lordship is trying, namely, whether or no the facts stated in the book are true, if it refers to the statements made in the book, with great respect I submit it would be very wrong not to allow it.

Mr. Justice DARLING: I do not think that this is admissible. The Defendant has not said; I justify what I wrote on the ground that I was relying on a statement made by the Secretary of State in India in answer to a question put in the House of Commons. I think there is a wide distinction between information which was available to him, and which it can be proved he did use. As the case stands I am sorry, but I think I ought to exclude

this evidence.

Sir ELLIS HUME-WILLIAMS: I accept, of course, your Lordship's ruling.

3074. Lord Sandhurst, were you the officer who directed the prosecution of the Plaintiff in this case?—I was the Governor of the Presidency at the time the prosecution was determined upon. I presume you are alluding to the prosecution in 1897?

3075. In 1897. It is common ground what happened in the prosecution and the sentence that was passed upon the Plaintiff at the time. Did he when he was in prison give an undertaking which was read to the Court?

Sir JOHN SIMON: Is that a matter Lord Sandhurst can speak upon?

Sir ELLIS HUME-WILLIAMS: I was going to ask him.

Mr. Justice DARLING: He can say he knows he did or does not know.

3076. Sir ELLIS HUME-WILLIAMS: Did he give an undertaking to you: Did you ask for it and did you obtain it?—He did not give it to me personally, it was given to the Government. It was on those grounds he was allowed out.

3077. The conditions are these: "That you will not countenance or take part directly or indirectly in any demonstration in regard to your release or in regard to your conviction or sentence. That you will do nothing by act, speech or writing to incite disaffection towards the Government." Then we know he signed himself a sort of additional memorandum: "I hereby accept and agree to abide by the above conditions, understanding that by the act, speech or writing referred to in the second condition is meant such act, speech or writing as may be pronounced by a Court of Law to constitute an offence under the Indian Penal Code, and I acknowledge that should I fail to fulfil these conditions or any portion of them the Government of Bombay in Council may cancel the remission of my punishment, whereupon I may be arrested without warrant and remanded to undergo the unexpired portion of my original sentence." You were the Governor of Bombay at the time?—I was Governor of Bombay at the time.

3078. Did Tilak break these conditions? So far as I recollect, not when I was there.

3079. You had retired?—I retired in February, 1900.

3080. Then of course you would not know.

Cross-examined by Sir JOHN SIMON.

3081. Lord Sandhurst, as I follow you were connected with the Government of Bombay from 1895 to 1900?—That is so.

3082. Yourself Governor and there was I suppose a Legislative Council?—The system of the Government is this: There is a Governor, and at that time two Executive Members of his Council and the Governor was then styled "the Governor in Council." There is also a Legislative Council composed of a number of gentlemen.

3083. The Legislative Council, would that contain a number of native gentlemen as well as a number of Anglo-Indians?—Yes.

3084. Was Mr. Tilak, the Plaintiff, a member of the Legislative Council?—He was.

3085. The members of the Legislative Council I think are not elected by popular election, they are selected by the Government, are not they?—Not quite, Sir John. I do not know what may happen now. There was a system of restrictive election, by which I mean there are certain groups of municipalities or local boards as in my time which elect a gentleman to represent them; that name is then submitted to the Governor of the day for his nomination to the Legislative Council.

3086. Upon any given gentleman thus nominated does it rest with the Government—I suppose really technically with yourself—to confirm the nomination and accept the appointment?—Yes. As I said, on the gentleman being elected the Governor can refuse to nominate him—the Governor, not the Governor in Council—it is the responsibility of the man who is for the time being Governor.

3087. Mr. Tilak, I think—I see it by documents here—not only was a member of the Legislative Council of Bombay, but he was recommended in the course of your time for a further term—it was in June, 1897?—I am not very clear about that, but he was, at any rate, a member of the Legislative Council.

3088. What I wanted to remind you of was this, and I daresay your memory will serve you when I remind you: that in June, 1897, Mr. Tilak, who was re-elected as a member by the local board, was then accepted or confirmed by yourself in that position?—Yes. That was after that election.

3089. In June 1897. I think the confirmation follows a month or two later. Would that be the ordinary practice?—I should not like to charge my memory by that, but I should think it must have been almost at once after the election.

3090. Besides that, Mr. Tilak was, was he not, a member of the Municipal Council at Poona?—I cannot say; I do not know.

3091. That I should not get confused, and we should all get this clear, your predecessor was, I think, Lord Harris?—Yes.

3092. During your period of office in, I think, the years 1898 and 1899, the Indian Plague Commission sat and took evidence and reported. That would be during your time, would not it?—I do not know whether there was more than one Indian Plague Commission, but I have heard one referred to here which I think was subsequent to my departure. I speak under correction, but I have no clear recollection of it.

3093. This is the book I mean. Those who hold high administrative office often have to look at these blue books at times. That appears to me to be the commission of 1898 and 1899. (Handing same)?—Yes, the evidence commencing in February 1899.

Mr. Justice DARLING: Did they report in Lord Sandhurst's time?

Sir JOHN SIMON: I think they did, my Lord, I will find out.

Sir EDWARD CARSON: No, my Lord, it was after his time, 1901.

Sir JOHN SIMON: Give me one moment to make certain we are both speaking of the same thing. My friend is not quite right in point of date. I have the last volume, the report of the Indian Plague Commission with appendices and summary; the other volume is the evidence. This is headed: "Indian Plague Commission 1898-

1899," and it begins by a dispatch in 1898 appointing the Commission, which is followed by a report of the evidence, the evidence having been taken in 1898-1899, which is signed by members of the Commission and the Secretary; the report bears date 26th July, 1901.

3094. It would seem then the evidence was being taken in your time and the actual report was after you had finished your term of service as Governor?—Apparently that is so.

Mr. Justice DARLING: That is about what will happen to me The evidence will be taken in my time and the verdict will be afterwards.

3095. Sir JOHN SIMON: Were a large number of your officials called to give evidence at the Plague Commission as to what had happened, and as to their view and so forth?—It may be so, but I am quite strange to this Commission, Sir John; I do not recollect.

3096. I cannot expect you to know the contents of it all. I do not think you personally gave evidence before the Commission, did you?—No.

3097. The people who were called to give evidence I see, were the commissioners and deputy commissioners of the plague area for the plague administration in Poona and Bombay and other places, that is what you would expect, I suppose?—That may be so, I saw the names.

Sir EDWARD CARSON: The witness has said he knows nothing about it.

Sir JOHN SIMON: I think it is more convenient that the reference which I was asked to find I should not offer to this witness, but later.

Mr. Justice DARLING: The Plaintiff said he could find something he thought, in the report which justified what he had written. The better way would be to recall the plaintiff and produce it.

Sir JOHN SIMON: I will not trouble about it now. It is more regular, I agree.

3098. Would you accept this view as a view which officials might fairly take: That the system of discovering plague cases by house-to-house visitation, however necessary it may be in a sanitary sense, is absolutely intolerable to the people?—No, I do not accept that.

3099. Would you accept this view, that the lesson to

be learnt from the experience of Poona during the plague is, that it is with the co-operation of the people themselves that the maximum of efficiency and the minimum of inconvenience can best be secured ?—Yes, I can accept that. That was my plan.

3100. I hope you appreciate I am not criticising your administration or any distinguished officer, I just want to get your view ?—I quite appreciate that.

3101. Would you accept this view, still speaking of Poona : The people were panic-stricken, and they considered these measures to be more horrible than plague itself—I am not saying they are right, but would you accept that as a fair description of their view ?—No, I do not agree to it.

3102. Would you accept this principle of administration in view of what happened at Poona, that no plague measures should be so severe that people will try to evade them ?—As a general principle I would agree to it, but there is something to be said on the other side.

3103. I can imagine that; nobody will envy you your task of being Governor at that time.

Mr. Justice DARLING: Did the late Lord Derby write that about some sherry which was supposed to be a specific for the gout. He said he had tried the sherry but he would rather have the gout.

3104. Sir JOHN SIMON: Would you in the light of your experience accept this, Lord Sandhurst. That it is a mistake to segregate all persons high and low at one place but that you should rather aim at segregating different classes of the community each in a separate place ?—As far as could be done, I should think that was a sound principle.

Mr. Justice DARLING : It sounds very undemocratic, Sir John.

3105. Sir JOHN SIMON : And the fact is, is not it, that in the Poona Segregation Camp they did bring together all persons, high and low ?—I cannot give you a direct answer to that.

3106. Would you accept this as what happened at Poona : that in suspicious cases inmates were segregated before the case was declared to be one of plague, and they had to undergo the pangs of segregation for nothing ?—

There again I cannot give you a direct answer to that. If I may add something——

3107. Do, please?—I had great confidence in my officers, who worked extremely sympathetically with the people, and spoke the language; there were parties accompanied by native gentlemen and native ladies, too, and I do not believe in that line of action you have just read.

3108. I am sure you would not. I mean it is obvious, of course, to all of us—certainly to you and me—that the administrative problem to be solved is one of the greatest difficulty. I suppose you would agree to that, without making any reflections either upon the good faith or upon the high character of an administrator, it may very well be that his course of action does lead afterwards to the criticism that perhaps some other method would have been better?—My answer to that is we naturally endeavour to profit by our experience.

3109. We all ought to. As a matter of fact, without knowing the details of the Indian Plague Commission was not there a large body of evidence offered before the Commission by your own officials to show that they had——

Sir EDWARD CARSON: He knows nothing about it.

Mr. Justice DARLING: I think you can safely trust Lord Sandhurst to answer. He understands, if he does not know he will say so.

Sir EDWARD CARSON: This is all making suggestions to the Jury.

Mr. Justice DARLING: That cannot be helped. Our Courts do not prevent Counsel from putting by suggestion those things to which the witness can only say: I do not know.

Sir JOHN SIMON: I would desire as far as I may to avoid that but I think I can do it and I wish to do it.

3110. Do you know whether as the result of the experience of the plague some of your officials did draw a conclusion in the light of that experience and record it?—No, I cannot say I do.

3111. That is quite fair. I must ask you the further

thing: You went to Poona as I follow; of course, you had a great many other things to do, but you actually personally visited Poona during the plague as I follow on two occasions?—Certainly on two occasions.

3112. It would be fair, would not it, to say, as indeed the Judge said who sentenced Tilak, that Tilak did good work in connection with the plague?—Yes, I am sure the Judge knew what he was saying: "I know that Tilak was active in promoting what we called the plague hospital, I think for Brahmins, and I also believe —this is 21 years ago—In fact I know that he saw Mr. Rand on various occasions; I do not wish to detract from any services Mr. Tilak rendered.

3113. Nobody, I think, intends to embroil you in a controversy in this case at all. May I ask you, is it within your recollection that Tilak actually made application to you wishing to draw your attention to matters that were happening in Poona in connection with the plague administration?—No, I do not recollect that, and I was always very accessible to everyone whether they were native or European.

3114. I can quite understand an application of that sort may, very well in the proper course of business, have to be referred to somebody else, but you do not remember whether that was so?—No, I do not remember.

3115. I can well understand you would not actually remember it—"Mr. J. J. Heaton"—who was Mr. J. J. Heaton?—He was my private secretary.

3116. Would you look at that letter which is there exhibited?——

Sir EDWARD CARSON: I object, my Lord, this is something which is not in evidence; it is a print of some letter; my friend has shown it to me. Your Lordship ruled a letter of Mr. Gohkale's out because they had not the original here. I object to looking at a print.

Mr. Justice DARLING: I understand this is done to refresh Lord Sandhurst's memory?

Sir JOHN SIMON: Yes, my Lord.

Mr. Justice DARLING: Why should not you show him anything which would refresh his memory such as the copy of a newspaper or anything of that kind? The

witness says: Well, the thing happend 21 years ago, I do not remember, it may have passed out of my memory.

Sir EDWARD CARSON: My Lord, what I was objecting to was, it was going to be put to him as a letter from somebody to somebody else.

Mr. Justice DARLING: Oh, no, that cannot be done, we must not know what it is, but I think it is quite permissible to show it to the witness, and for Sir John Simon to ask him: having looked at that, do you now remember something, but there is no means of making that letter evidence.

Sir JOHN SIMON: Oh, no, my Lord, I quite understand that.

3117. Mr. Justice DARLING: You understand that, Lord Sandhurst, there is a limit to which we can go in this, which is that it may be shown to you, and you may be asked whether now you remember something you did not remember a few minutes ago?—Quite, my Lord.

3118. Sir JOHN SIMON: It may well be this will not help you. Perhaps you will just look at the bottom of that page, at your answer to Mr. Heaton. Looking at that now, does that enable you at all to help me on the matter I asked you just now?——

Mr. Justice DARLING: You can ask him something more definite than that.

Sir EDWARD CARSON: It would take half an hour to read it.

Mr. Justice DARLING: It may be reading the first line it will remind him.

Sir JOHN SIMON: The whole thing consists of two lines. Would your Lordship look at the book. (Book handed to his Lordship). It is two lines at the bottom.

Mr. Justice DARLING: These little things sometimes will refresh one's memory. You are only asked just to read *that* passage. Then, Sir John, put the question to him, not in the form can he help you, but what you want to get is whether he now remembers what he did not remember a quarter of an hour ago.

3119. Sir JOHN SIMON: All I want to know is, looking at that can you now tell me whether you remember

that Tilak did communicate with you on the subject of the Plague Administration?—No, I do not recall this incident.

3120. Very well, I shall not attempt to go further. However that may be, did you ever see Mr. Tilak, as far as your memory serves you, on the subject of plague administration in Poona?—I cannot recall a definite interview.

3121. Critics sometimes do not understand how busy an official is, but no doubt you were very busy, and I expect especially busy during the plague administration, were you not?—Yes, Sir John, I had a famine on my hands at the same time which required a great deal of attention.

Re-examined by Sir EDWARD CARSON.

3122. Do you think, Lord Sandhurst, the fact of a famine and a plague being on at the same time there added to the incitements in Tilak's papers?—I do not think there can be a doubt of it, with the population suffering so much as that unhappy population did, which I never can think of without emotion.

3123. I have only one other thing to ask you; to use my learned friend's formula, would your experience enable you to agree to this: "That the actual conduct of the troops, British and native, on the work of searching did not warrant this attitude on the part of the people. The behaviour of the soldiers in carrying out those disagreeable duties is reported to have been exemplary"?—That represents my view, and I have always found that the private soldier and non-commissioned officers are chivalrous fellows. You see them every day in the tubes and various places getting out of their seats for women and holding up children out of the squash; those men in Poona in those days differed in no particular from the men of to-day.

(The Witness withdrew.)

Sir RICHARD LAMB, sworn.

Examined by Mr. EUSTACE HILLS.

3124. Were you a member of the Indian Civil Service from 1879 to 1915?—Yes.

3125. I think when you retired you were a member of the Council in Bombay?—I retired as member of the

Council of the Governor of Bombay.

3126. In December of 1896 were you appointed Collector and District Magistrate at Poona?—Yes.

3127. And at that time, as we know, the plague had already broken out?—In Bombay; I think it reached Poona in January of 1897, to the best of my recollection.

3128. Mr. Rand was appointed, as we know, a special officer to deal with the plague operations in that year, 1897?—In March, 1897.

3129. What was Mr. Rand's position as compared with your service there?—Technically, he was an Assistant Collector in my district, of which I was head, but he was on the special duty of being chairman of the Poona Plague Committee, and his duties were restricted to that only.

3130. During the time that he was there, did you see him frequently?—Occasionally; perhaps frequently would be rather much. I saw him occasionally during March and April and May. Later in June I saw him more frequently.

3131. Would it be a fair description of him to describe him as suspicious, sullen and tyrannical?—No.

3132. Were you acquainted at all with the way in which during this period the British soldiers did their work?—Not by personal inspection; only by reports from Mr. Rand and others.

3133. If there had been complaints let us say of outrages against the natives would they or would they not in the ordinary course come to you?—Not necessarily direct to me, but to me as head of the district it would be almost certain that in time some would come.

3134. I meant in your position as head of the district. Did any such reports in fact come?—I have no recollection of any.

3135. With regard to the search parties to investigate cases of plague, I take it you did not yourself accompany those?—Not during Mr. Rand's chairmanship. I did later on, when I was chairman myself.

3136. During your service, and particularly during the year 1897, did you make yourself acquainted with the writings in the native Press?—I read regularly the report on the native Press which is supplied by Government to

its officers, and occasionally I read some papers of the native Press myself.

3137. Can you say whether amongst those papers you saw articles of the "Kesari" and the "Mahratta"?—I saw extracts from the "Kesari" and the "Mahratta."

3138. From your experience of India, had writings such as you saw in the "Kesari" and the "Mahratta" affected the Indian population more or less than they would the population of this country.

Sir JOHN SIMON: That is a question which cannot properly be asked.

Mr. Justice DARLING: Which population is most affected by the Press. It is very difficult to say.

Sir EDWARD CARSON: Has not the witness a right to give his local knowledge of, for instance, what would be the effect on the people of a locality like that of such writings as Mr. Tilak has given? We cannot translate ourselves to India.

Mr. Justice DARLING: He is asked whether the effect of articles in the Press on the people of Poona would be more definite than the effect of articles on the people of London.

Sir EDWARD CARSON: Put the question, what effect such writings as he read in Mr. Tilak's paper would be likely to have on the people of Poona.

Sir JOHN SIMON: To that question there is a separate and equally good objection. That is asking this witness to say what is the issue for the Jury. You cannot call a witness to tell the Jury his view of one of the issues in this action.

Mr. Justice DARLING: I think you might ask him, in his opinion, whether such articles as he saw in the "Kesari" and the "Mahratta" would have any effect. Then the next question you put will be objected to and I will deal with it.

3139. Mr. EUSTACE HILLS: Would articles such as you saw in the "Kesari" and the "Mahratta," in your opinion, have any effect on the population of Poona?—Yes.

3140. What effect?——

Mr. Justice DARLING: Do you object to that, Sir John?

Sir JOHN SIMON: Yes, that is the same thing.

Sir EDWARD CARSON: I submit that that is a perfectly legitimate question. This action is brought in England and we have a right to let the Jury know what in the experience of a gentleman who was practically governing the place in his opinion would be the effect on these men. We cannot otherwise, without evidence, bring the Jury to the contemplation of what was the natural sequence to follow from such things as these. I submit it is merely giving an account of the nature of the people in relation to the nature of the writings, in answering such a question as this.

Mr. Justice DARLING: My view is this: If this were a case regarding publications in English newspapers, and the effcet upon the people in England, the question would not be asked. It is a different thing when it is the effect on people of whom we know little and the witness knows a great deal, because he has had business as a Minister there and in that sense he appears rather in the position of an expert of whom you might ask: From your practice as a doctor among the Chinese, let us say, can you tell us what would be the effect of opium on a Chinaman? That would be admissible. But as to this I am not so clear as to whether he is a recognised expert or not, and I have great hesitation in deciding whether the question is legitimate, so I think it would be safer not to ask it. You understand, Gentlemen, if I make a mistake in admitting evidence which ought not to be admitted, the Court of Appeal might upset this and all this might have to be gone over again and I am anxious to avoid that.

Cross-examined by Sir JOHN SIMON.

3141. Are there a large number of native papers in the Bombay Presidency?—A considerable number. The number is small compared with the number of papers that are published in England.

3142. I am not instituting comparisons of that sort. There will probably be—what shall we say, in the Presidency altogether—a dozen or 20?—A hundred or a hundred and fifty roughly, I could not say that is at all accurate. At least, it runs into a hundred; more likely two hundred, I should think.

3143. You mean in the Presidency?—I mean in the whole Presidency.

3144. And after Bombay is Poona, the biggest city in the Presidency?—I should have to look at statistics. I am not sure Ahmedabad does not beat it.

3145. Bombay is the biggest and Poona is the biggest or the next biggest but one; it is one of the largest towns in the Presidency?—It is one of the largest towns.

3146. What is the total native population of Poona in round figures?—I think about 100,000. There, again, I should like to verify it.

3147. I am sure you will remember, because I think you were there, during this dreadful tragedy of the murder of Mr. Ayerst and Mr. Rand?—I remember it.

3148. You did, did not you, about a week later make a public speech in Poona about it?—I did; what the "Kesari" or the "Mahratta" described as the "lionlike bleating of the Government lamb."

3149. That sort of rhetoric, which some people admire and some people dislike, is rather frequent in native journalism, is not it?—I could not say that that is general.

3150. Not those particular words, but that kind of rather ornate way of writing?—It is to be found in the "Kesari" and the "Mahratta."

3151. Do you really mean to say that if I were to take other native newspapers, nothing to do with this case, that I would not find that kind of flamboyance in other native newspapers?—I do not say you would fail to find any example; I doubt if you would find any to equal it.

3152. In this speech you begin by saying; "Since the occurence of the events alluded to, I have been hoping and even expecting that some expression of abhorrence of this terrible deed might reach me from the City of Poona." You go on to say you waited in vain?—I take it from you; I cannot remember what I said now.

3153. I gather from that, you cannot have seen what had been published in the "Kesari"?—I cannot answer that. I do not understand what you are referring to.

3154. You spoke on your then state of knowledge.

As far as you knew when you then spoke, there had not been anything of that sort published?—Doubtless.

3155. Later there was, was there not, a second outbreak of plague which touched Poona?—Yes.

3156. Was that in your time?—I was Chairman of the Plague Committee then. I succeeded Mr. Rand.

3157. At that stage, and dealing with that outbreak, the segregation was not so strict and complete as it had been in the case of the earlier outbreak, was it?—I cannot compare them because I was not personally acquainted with the exact degree of strictness enforced by Mr. Rand when he was chairman, but we were strict to the best of my recollection during my chairmanship in segregating the plague patients.

3158. I am quite certain the course you took, and the degree of strictness you exercised, were those which you felt in the circumstances were most likely to secure efficient administration; of course they were?—We did what we thought was most efficient to get the plague out of Poona again.

3159. With as little violent interference with the habits of and traditions of the native population as was consistent with efficiency?—But still enforcing as much interference as was required for efficiency.

3160. Major W. I. Reeve was on special plague duty, was not he, at Poona when you were head of the Plague Administration there?—I was chairman of the Plague Committee and he was there at that time. Subsequently he was on the committee himself.

3161. In the second epidemic was more reliance placed on the help of the native people?—Again I cannot institute comparisons. Reliance was placed on the help of the native people, but I am not prepared to compare it with what was done before, because I was not there.

3162. Put out of sight what happened before you became responsible and confine yourself to the course of administration after you became responsible. Did you gradually lessen the strictness of the measures, and after a time modify them more?—I do not think so. To the best of my recollection we maintained the same degree, so far as I remember.

3163. Did you do away with compulsory detention

in segregation camps?—I am not quite sure. That may have been done after the Committee was enlarged.

3164. It is a long time ago?—I cannot be certain. The Committee was constituted of myself and two officers only, and after that two more were joined.

3165. Did you establish a system by which people were allowed out during the day and only reqired to report themselves at night—a roll call?—I think that was put in force, whether it was while I was still chairman I cannot say.

3166. And did you limit their segregation to a period of ten days?—I do not think I did, it may have been done later.

3167. I mean during the time of your administration?——

Sir EDWARD CARSON: Speak of what you knew; my friend is trying to get indirect evidence.

3168. Sir JOHN SIMON: I am asking for the period when you were responsible for the plague administration. During that period did you depend more and more on gaining the confidence of the people and getting native volunteers?—My recollection is we began with native volunteers?—My recollectIon is we began with native volunteers from the first start of the renewed operations under me.

3169. Do not you remember this: that during your administration you changed the system of searching more particularly?—I cannot remember that I did it myself. At the distance of time what I think happened was this: that at first I started as chairman with only two members of the Plague Committee and I had in hand, more particularly, the searching while the other members took charge of the hospitals and the segregation camp. Later on more members were added to the committee, Major Reeve and an officer who is now General Sir O'Moore Creagh. Then it was divided up; I remained in the office looking after the financial and the record work of the committee, while the work of segregation and getting out patients and taking them to hospital, and the control of the hospital, was divided amongst the other members, and I personally had less to do with the terms on which men were removed and

kept in segregation camps, so that I cannot say for certain at this time what was done while I was directly in charge and what was done after the committee had been enlarged and its work distributed among a greater number.

3170. Perhaps you can help me about this more general thing. Do you think that the policy of adminstration adopted when you were at the head of the Plague Committee had the result of giving more confidence to the native people?—Confidence in what?

3171. Confidence that what was being done could be accepted as necessary and as being done in the way that they could best accept without protest?—I cannot answer that directly because there comes a question, again, of comparing with what went before; it is a question of more confidence. I say in my time they had confidence that we were doing our best to beat the plague, but I think also that they had confidence that Mr. Rand and his Committee were doing their best also. The question of comparison with "More confidence" I cannot answer.

Re-examined by Sir EDWARD CARSON.

3172. I suppose I may take it that according as the plague grew less, restrictions were able to be relaxed?—Undoubtedly.

3173. You did not keep them up to the same level?—When there was no plague in Poona, the plague searches were entirely stopped.

3174. I suppose you were only too glad to get rid of these stringent restrictions for driving it off?—Quite so.

3175. As regards native volunteers, do you know whether there were native volunteers in Mr. Rand's time?—I believe so, but I cannot answer that for certain.

3176. Sir John Simon has asked you about a speech you made—a very foolish thing to do?—I did it under orders.

3177. Was that in consequence of the murder of Mr. Rand?—That I made the speech, yes.

3178. Was that speech severely commented on in the "Kesari"?—I have quoted the only line I remember of the comment.

3179. I will read you a passage, it is mild compared

with lots, but then you were a "lamb," as they said themselves. This is with reference to your speech: "It is obvious that this resolution must have already been approved and sent to the Press before the Collector's threatening speech was delivered. We fail to see why Government should have made this vain show of giving a threat to the people through the Collector. There was absolutely no need to tell the people—especially the people of Poona—that there was no crime more horrible than murder, that no one should give any refuge to a murderer or conceal him, but that everyone should so endeavour that the murderer would be exposed and get the severe punishment prescribed by law; and it will appear to anyone who even cursorily reads the speech that Mr. Lamb did not invite the leaders of this place for that purpose. From the last portion of his speech it is clear that Mr. Lamb must have made the speech with the consent and under the orders of, nay from the very draft approved by the Government"?—It was under the orders of the Government.

3180. Did they prepare the speech for you?—No, I prepared it myself, but they saw it before I delivered it.

3181. "And if this be true, we are compelled to say that Government's head must have been turned on account of the horrible crime of the 22nd of June. Someone has put this idea into the head of Government that all this is the result of a plot made by the Poona Brahmins, and that otherwise these murders would not have taken place on the very day of the Jubilee. Besides, Government has got this notion in its head, that the mischievous schoolboys spoiled by the present education, the Shivaji festival or the slashing and seditious articles appearing in the Mahratti newspapers, must have been instrumental in the perpetration of those crimes, and that great calamity will ensue if the people conducting these institutions are not destroyed now by showing them the fierce form of Government, i. e., by dealing with them mercilessly. In our opinion this belief of Government is very wrong and foolish." Had you referred to the native Press in your speech?—I cannot remember what was in the speech now.

3182. You were asked as to the number of papers in the Presidency and you said 100 or 150 altogether in the

Bombay Presidency. Do you know how many there were in Poona itself?—No, I cannot say; 15 or 20 possibly in Poona itself, I am not sure.

Sir EDWARD GILES, sworn.

Examined by Sir ELLIS HUME-WILLIAMS.

3183. You are a Companion of the Indian Empire, and from 1897 to 1907 you were Director of Public Instruction in Bombay?—Yes.

3184. After that you were for a short period Director of General Education in India from 1907 to 1908; then you retired and came home to this country. Were you residing at Poona in 1897?—I came into residence from Karachi on the 1st April, 1897, at Poona; that was my headquarters.

3185. That was during the plague?—Yes.

3186. How long did you remain there?—I was going backwards and forwards occasionally, but otherwise I was there all through April and May in the rainy season.

3187. Did you read in the native Press at Poona some accusation against the conduct of the British soldiers in connection with the plague?—I used to see the Government issue of excerpts from the native Press, and I was aware that some complaints were made against the soldiers.

3188. Did you therefore go to Poona and watch the soldiers at work yourself?—I had just come from Karachi, which was in the thick of the plague, and as my brother was head of the plague committee at Karachi, I was interested to see the difference between the methods in Poona and Karachi, if there was any difference. That led me to go into the native town in Poona and to look at the way in which the plague measures were being conducted.

3189. By the soldiers?—Yes, I saw the soldiers at work on several occasions.

3190. Were the houses which the soldiers had to go into very insanitary, cow dung on the walls, and so on?—Some, of course, had cow dung on the walls, some were houses of a larger description with upper floors, and possibly those would not be cow dunged. There were houses of various kinds that I saw them go into.

3191. Do you know whether the soldiers were ordered to take any precautions against catching infection themselves?—It must be remembered that at that time we knew very little about the plague, and it was regarded as a most dangerous thing to go among plague patients. The soldiers, I believe, I am only speaking from my own knowledge picked up at the time, were not allowed to shave for fear they should scratch themselves, which might lead to the bacillus entering into the wound.

3192. In your observation of the work of the soldiers in Poona, how did they carry out their duty—humanely or otherwise?—I can only say that so far as I could see their conduct was extraordinarily admirable—kindness, consideration, gentleness to all that they had to approach and handle.

3193. Did you ever even hear of any case of soldiers having stripped women and burnt idols, and committed thefts, and carried people who had not got the plague off to plague camps?—Never. I am sure if any outrages had been committed, that I should have heard of it, and everybody would have heard of it.

3194. At that time did you hear of the Shivaji and Ganpati festivals which were going on?—I did.

3195. What was the tendency of the festivals? What was the aim of them?—It was brought to my notice that officers employed in the Educational Department and in aided schools, teachers and professors, were taking an active part in these celebrations, what was called the Ganpati Mela celebration, and it became my duty as Director of Public Instruction to inquire into this matter, because it was felt by the Government that it was not a wise thing that teachers and professors should be taking a part in what was considered a political agitation.

3196. Political agitation in favour of, or against, the British Government?—I should say a political agitation not in favour of the British Government.

3197. Did the principles of these festivals penetrate into the schools, in consequence of the officers of the schools having attended them?——

Sir JOHN SIMON: I do not know whether this witness can answer. If he is expected to answer it, I should

be much obliged if my friend would not ask the question in a leading form.

Mr. Justice DARLING: I think it is very unnecessary. The Jury have got the articles and the praise that is lavished on certain people, and so on.

3198. Sir ELLIS HUME-WILLIAMS: Did you, in fact, have to close any schools in consequence; if so, what schools?—I had to deal in the first year of my administration as Director, with political agitation in three large educational societies, the Deccan Educational Society, the Ahmednagar Educational Society and the Poona Native Institution.

3199. Were those educational societies which had schools attached to them?—Yes, schools and colleges, except in the case of the Ahmednagar Educational Society, which only had a high school.

3200. What steps did you take?—In the case of the Ahmednagar Society——

Sir JOHN SIMON: Before we deal with the Ahmednagar, whatever it is, would my friend lay the foundation, if there is any foundation, for bringing it into this case? This is an action brought by Mr. Tilak, and I apprehend we have not got to inquire into the whole course of administration in India.

Sir EDWARD CARSON: One of the alleged libels brings this in.

Sir ELLIS HUME-WILLIAMS: It extended to the children; this evidence shows it not only extended to the children, but they had to close the schools.

Mr. Justice DARLING: I should have thought you might ask whether they had to close some schools, and so on: then we shall see if there is any cross-examination.

3201. Sir ELLIS HUME-WILLIAMS: I will take it shortly. Had you to close some schools?—Not of those societies; it was not a question of closing schools, it was a case of punishing the Society.

3202. How did you punish them?—The Ahmednagar, we called up 15 members of the governing body and put before them what their headmaster said in a speech that he had made at the Shivaji meeting in 1897, which speech was fully reported in a newspaper which is being run by four of the assistant masters of the school.

Sir JOHN SIMON: Now I take my objection. I do submit there must be some limit to this. This gentleman very naturally may not understand the limits of the present case; a paper run by four people at a school—what has that to do with this libel action?

Mr. Justice DARLING: He began such a long way off. Take him to Poona.

Sir ELLIS HUME-WILLIAMS: I will take him to Poona, via Maharashtra.

3203. Was there a school at Maharashtra?—That is under the Poona Native Institution; the Deccan Educational College was in Poona.

3204. Was there a college called the Maharashtra College?—Yes; that is not very important; it did not have a very long life.

3205. Did you know there a gentleman named Shivram Mahadev Paranjpe, who was on the staff of it?—Yes.

3206. What happened to the Maharashtra College?—

Sir JOHN SIMON: I am sorry, but I must object to that. My friend has laid no foundation for inquiring what happened at this interesting college, even though the schoolmaster's name begins with the letter "P" and is a gentleman my friend knows.

Mr. Justice DARLING: He was very closely associated with the Plaintiff, and got convicted.

Sir ELLIS HUME-WILLIAMS: Yes, and sentenced for sedition, and helped him with the Defence of the case.

Mr. Justice DARLING: I think that after we have got Paranjpe we may go on.

3207. Sir ELLIS HUME-WILLIAMS: What happened to the Maharashtra College?—As far as I remember Paranjpe and another man were dismissed by the College Board, but I did not attach very great importance to the Maharastra College. The other two cases were much more important—much more influential; that Maharashtra College was quite a subordinate matter.

3208. Do you remember Mr. Tilak being prosecuted and sentenced in 1897?—Do I remember his being sentenced?

3209. That was the question?—Yes.

3210. Did he come and see you after his release?—

After his release, yes, he came to see me.

3211. He could not see you before it, could he?—No.

3212. Did he come and see you?—Yes.

3213. What did he tell you he had come for?—I understood from Mr. Tilak that he was well known as a great Sanskrit scholar. He was anxious to take up some work in editing Sanskrit manuscripts, work that is carried out by Sanskrit scholars. In the Bombay Presidency there are many manuscripts that have not been properly edited, and scholars frequently take up that work, and the Government gives a grant to them if the work is properly carried out.

3214. He wanted to do some work in editing Sanskrit manuscripts?—Yes.

3215. Did you have a conversation with him about it?—So far as I remember—it is a good long time ago—Tilak and I were alone together in that conversation.

3216. Did the conversation turn at all upon propaganda?——

Sir JOHN SIMON: I object to this. You have asked him to tell us what the conversation was?—If you will allow me, I will tell you in my own way.

3217. Sir ELLIS HUME-WILLIAMS: I do not want the whole conversation about translating into Sanskrit, but I want the conversation about propaganda—what you said and what he said?—We first discussed the question of the Sanskrit manuscripts. This is so far as I remember. It is a long time ago.

3218. I quite agree it is?—And I entirely sympathised with Mr. Tilak's wish to take up literary work. I understood he had given up political agitations, and I knew that his literary work would probably be well done because he was an able man, and I believe we satisfactorily settled our business with regard to the Sanskrit manuscripts. Then I went on to talk with Mr. Tilak on other matters. You will allow me to say that as head of the Education Department of the Bombay Presidency I had felt greatly and deeply that all this agitation connected with schools and teachers and with boys was a most mischievous thing, and I had come to the conclusion that the influence of Mr. Tilak whom I

knew had been on the same platform at the Shivaji meeting with a professor of the Fergusson College——.

Sir JOHN SIMON: Really this witness must obey the same rules as other witnesses.

Sir ELLIS HUME-WILLIAMS: Will you kindly try to tell us what the conversation was between you?

Mr. Justice DARLING: I have long noticed that people who have been engaged in Civil Service in India are not brief.

Sir JOHN SIMON: I agree it is a long time ago.

3219. Sir ELLIS HUME-WILLIAMS: I want you if you will, kindly to tell us what the conversation was between you?—The conversation was generally on the question——.

3220. Listen to me. Will you kindly tell us just what you said to Mr. Tilak and what Mr. Tilak said to you. That is all we want?—Do you want it verbatim?

3221. No. It might have been shorter, but that is too much to expect?—I discussed with Mr. Tilak, so far as I remember, the whole question of schools and agitation, and I tried to find out from him what his objects were. It was admitted that he had been indulging in a certain amount of agitation, and it was admitted that he had been convicted of sedition, was it not?

3222. Yes?—Very well. Then I tried to find out from him what really was in his mind because I recognised, and I recognise that Mr. Tilak had what I may call a very complex mind. I believed that he was a man who thoroughly understands what is good.

3223. Yes, but what did you say to him?—I cannot say what I said to him word for word. I can tell you that we had a long conversation, and as we went on talking, Mr. Tilak at the end—he talked more than I did—let himself go—I am very glad to be a source of amusement.

3224. Did he say anything about agitation?—He said to the best of his knowledge and belief, and it made a very great impression on me at the time, that it was of no use to argue constitutionally with the British Government, because you might spend years in writing and arguing and arguing and writing and it would not move the British Government, but that it was

necessary to be more drastic in your methods with the British Government so as to give them a shock.'

Cross-examined by Sir JOHN SIMON.

3225. I have only two questions to ask you. It was a long time ago, was it not?—Yes.

3226. And it is as far as you remember, is it not?—As far as I rember.

Sir JOHN SIMON: That is all I ask you.

Mr. EUSTACE HILLS: My Lord, there is certain evidencc that was taken on commission.

Mr. Justice DARLING: Is there much of it to read?

Mr. EUSTACE HILLS: There is not very much, my Lord. There is a great deal that will not be necessary.

Mr. Justice DARLING: Gentlemen, I will tell you what this is. Mr. Hills is now going to read evidence taken in India on commission, that is to say, it is the evidence of witnesses who cannot be brought here. A commissioner is appointed who has power to take their evidence and they are examined and cross-examined just as they would be if they were here, and that evidence is taken down in writing by the Commissioner and produced here in this book, which Counsel is now going to read.

Sir JOHN SIMON: Any objections as to the relevance or admissibility of the evidence have to be taken now.

Mr. Justice DARLING: Yes, of course, and I will decide those, but I hope there will not be any.

Sir JOHN SIMON: I hope there will not. It depends on my learned friend.

Mr. EUSTACE HILLS: I was going to make a suggestion with regard to that. There are a large number of documents put in. I take it, it will not be necessary to go through all those, but they will be taken subject to any particular objection, if it is raised, when I come to that document. The first 19 pages are all taken up with putting in documents.

Sir JOHN SIMON: To a large extent, I think they are documents printed in these volumes.

Mr. EUSTACE HILLS: Yes, to a very large extent.

Sir JOHN SIMON: I quite agree that if it is necessary to take objection I must take objection as the evidence comes, but I hope it will not be necessary.

Mr. EUSTACE HILLS: I was going to begin at page 20. All the first 19 pages are taken up with putting in exhibits.

Sir EDWARD CARSON: I understand the documents are in, subject to any objection to any particular document?

Mr. Justice DARLING: Yes.

Mr. EUSTACE HILLS: At the top of page 20 there is the formal proof that Chapekar was hanged.

Mr. Justice DARLING: Sadhu Khondoo says: "I actually saw Chapekar hung."

Mr. EUSTACE HILLS: "It was on the 18th April, 1898, that he was hung." Then Mr. Paranjpe is called of whom the Jury have heard in the course of this case. He says: "I know Mr. Tilak, the Plaintiff. I have known Mr. Tilak for about 25 or 30 years. I have taken an interest in politics since I started the newspaper called 'Kal.'" Then he says: "At the time I started the paper I had no idea about the question of the Extremist's party, and who its leader was. Q. During the last 17 years, who has been the leader of the Extremist's party? Mr. Karandiker objects to this question as it is a double question? —There may be an Extremist's party, in 1905 in the Bombay Presidency. I might not give the name Extremist's party. I might give it the name Swadeshi party."

Sir JOHN SIMON: Will you read the next sentence?

Mr. EUSTACE HILLS: "There is no principal man as the leader of the Swadeshi party. All those that work more are the principal men. I can't give any names of any leaders. I have heard the words Extremist's party applied to what I call Swadeshi party." Then he is asked what the difference is between the Moderate party and Swadeshi party, and he says: "According to my opinion Moderates usually take up social work whereas the Extremists or the Swadeshi party take up political work." Then, my Lord, I go to page 21, which is the 16th July, where it is continued. This is still Mr. Paranjpe. He says: "I was the editor of the 'Kal' until I was arrested. It must be about the 8th of June, 1908"—that is the date of writ—"One B. P. Khare succeeded me

as the editor of the paper. I was on bail during the trial I was on bail until I was sentenced. From the time I was arrested until I was convicted I didn't see my paper at all." Then he says at the bottom of page 21: "I was with him"—that is with Mr. Tilak—"in Sardar Building Bombay when he"—that is the Plantiff—"was arrested I was living with him in the same building. I was with the Plaintiff in the same room when he was arrested. At that time I was on bail and under trial. I was arrested in Poona." Then he puts in a lot of exhibits. Then I think I can pass on to page 24 about three-fourths of the way down: "Was the Plaintiff at that time your best Guru?—I learnt under him at the school. (Question repeated by Mr. Binning.)" Mr. Binning was appearing on behalf of the Defendants. "A. All along I have been respecting him. I respect my father and mother more than the Plaintiff. Outside my relatives I don't respect anyone more than the Plaintiff." Then he says "'Mitra Mela' is a collection of boys coming together singing songs." Now turning to page 25, a little more than three-fourths of the way down, he is asked: "Do you in the main agree with the Plaintiff in political matters?—I cannot bind myself. In some respects I consider since 1905 that India is in a state of slavery." Then at the bottom of the page: "I also know the editor of the paper called 'Bhala' called Bhasker Balvant Bhopatker."

Sir JOHN SIMON: Will you read a little above that, where he says; "I do not necessarily agree on political matters."

Mr. EUSTACE HILLS: I did read that.

Mr. Justice DARLING: Yes.

Mr. EUSTACE HILLS: Then I turn over the page, I will read anything you want. I am missing out a good deal. Then Mr. Paranjpe says: "I had taken a vow of Swadeshi and Boycott. I can't say on what particular occasion I took the vow." Then a little bit further down the page he says that Ramdas was the spiritual teacher of Shivaji. Then turning to page 27, at the bottom of the page he says: "I was a student at the time when the agitation regarding the Age of Consent Bill took place. I may be about 25 years old at the time. I was a student at that time. The orthodox party objected to the age

being raised. I can't say the names of the leaders who agreed with the reform movement. Mr. Justice Ranade was on the side of the reformers. In favour of the change." Then: "Mr. Justice Telang may have been on the side of the change. Professor Bhandarkar must have been on the side of Mr. Justice Ranade." Then he says: "The Plaintiff had and has a bungalow at Siveghad. I might have visited the Plaintiff's bungalow. I have visited the Fort. Siveghad Fort is Shivaji's Fort. There are some bungalows there. There are less than 20 bungalows there." That is all I want to read of that.

Sir JOHN SIMON: Then at the bottom of the page, the same witness is cross-examined. I can pick out quite a small part which is, I think, all I shall need. At the bottom of page 28, the last answer but one, the witness says: "For the English word Professor you often use the word Guru." Then on page 29, about 8 or 10 lines from the bottom of the page: "Q. What is the Swadeshi talked about when the students were present?—Buying Swadeshi goods. The Ganpati festival lasts for ten days from the 4th to the 14th of Bhadrapad. If you include both days it would be eleven days. It is on the eleventh day that the Procession takes place. At such meetings lecturers from outside attend and address the people. People from Poona also go out to lecture on these occasions. It was on some such occasion that I went out of Poona and visited Nasik for lectures during the Ganpati festival." Then on page 30 I want to read the lower third of the page. I will read it continuously: "The Plaintiff"—that is Mr. Tilak—"never contributed to my paper." The paper is the "Kal." "He never sent anything for publication in my paper. He never asked me to write on any particular subject. He never asked me to express only particular views in my paper. He never suggested me to write on any subject in my paper. My paper 'Kal' was not connected proprietarily with the 'Kesari.' I was the sole proprietor of the paper 'Kal.' My paper was never connected with the 'Kesari' pecuniarily. There is no truth in the suggestion that my paper 'Kal' was the Plaintiff's organ. Q. Did your paper 'Kal' disseminate the same doctrines as the Plaintiff's with the same purpose and for the same

object?—No. My paper was independent of 'Kesari' or the Plaintiff. There is no combination or conspiracy between my paper and the Plaintiff's." Then there was one passage which I did not interrupt my friend to read. It is in the examination-in-chief at the top of page 27. I do not think my friend read it: "The object of the Paisa Fund was to employ the fund for industrial purposes. It was meant to produce articles which were not produced before in India. I can mention glassworks, which are helped by the Paisa Fund. There may be a pottery works too. I am not sure. The glass works are at Talegaon and started about eight or ten years ago.

Mr. Justice DARLING: It winds up in this way: "The fund does exist now."

Sir JOHN SIMON: Yes, my Lord. He says: "A balance sheet of the Paisa Fund has been published from year to year by the secretaries."

Mr. EUSTACE HILLS: Then, my Lord, we can pass to the next witness Abajirao Govindrao. He first of all puts in a Panch Nama, which, I understand, is an inventory. It contains pictures of the Plaintiff and speeches by the Plaintiff. Those are Exhibits. That is all that is matertal in his evidence. Then on page 34 there is a witness called Narhar Balkrishna Joshi, and he says: "I am a Chitpavan Brahmin. I was born about 1859. I was educated in Mahratti in Ratnagiri, and in English in Bombay," then he says: "I went to Benares to the Central Hindu College as an assistant professor of Sanskrit with only maintenance allowance. I went there about 1904 and left about 1906 or 1907. I next went to Smarth Vidyalaya at Kolhapur as a life member. I had to do the work that other members did. I did teaching work, I knew Professor Vishnu Govind Bijaporeker, roughly speaking, about 25 years. I met him at the Benares Congress." He is differently spelt, but he is the same Vijapurkar that we have had in the course of the trial. "He asked me to join the institution at Kolhapur, I have known Professor Bijaporeker, roughly speaking, about 25 years. At Kolhapur I got maintenance allowance and nothing more. It was the same with all the other life members. The Smarth Vidyalaya at Kolhapur had been going on for a year when I joined it. My

three sons accompanied me to Kolhapur, and they were also at Benares. I was a widower. The sons were pupils at Kolhapur. The object of the school at Kolhapur was to give education on national lines. There were about 100 pupils when I went there. There were some students of the ages of 20 and 25. They were advanced students. They number about 10. The other students ranged from 10 to 16. These students came from all parts of the Maharashtra. In Maharaashtra I include Poona, Satara, Sholapur, Belgaum, Dharwar, Ahmednagar, Nasik. It means the whole Presidency except Sindh and Gujrat. Nagpore is a part of Maharashtra. There were residential scholars. The life-members also lived there with the students. They were called teachers. Professor Bijaporeker and Mr. Desai, Mr. Karandiker, another Joshi and myself were the teachers." Then he says: "I was connected with this Vidyalaya for one year and nine months. Very soon after my arrival the Vidyalaya shifted to Miraj on account of plague. From Miraj we went to Talegaon"—of which the Jury have heard—"this was after two months. When I went to Talegaon they had just begun a glass factory. Iswardas was the expert. But the factory belonged to the Paisa Fund. Only one gentleman called Dattopant Patwardhan joined the Vidyalaya when I was there. I left the Vidyalaya because there were differences of opinion mostly in the religious and social matters between myself and Professor Bijapurkar."

Sir JOHN SIMON: Now, I object. Down to that point I daresay it was difficult to see what the evidence is about, but if this has any relevance at all, I submit there is no case for introducing it into this action. Whatever the gentleman's dispute is with the Professor with the funny name, I submit in the present case I do not see that there is any ground for introducing it.

Sir EDWARD CARSON: I must call your Lordship's attention to the facts with regard to this. This is Mr. Vijapurkar with whom Mr. Tilak was associated with a view to collecting funds for national schools to enable the students to be taught in these patriotic doctrines, as he called them, which he put forward.

My Lord, this Talegaon school is the school for which, amongst others, Mr. Tilak says he collected, and surely it is relevant that that is also the school which was shut up, as your Lordship will remember, by the Government on the ground that it was contrary to good order and the observation of public peace. This gentleman who is giving evidence shows what the reality of this school was, and I submit to your Lordship that in a matter of this kind, that is perfectly relevant.

Mr. Justice DARLING: Are you coming now to the exercise book? Is that the point—that he dictated?

Sir EDWARD CARSON: He refreshes himself from his book. I do not think that is my friend's point. My friend's point is that it is entirely irrelevant.

Sir JOHN SIMON: With great respect, I am not aware that there is evidence that Mr. Tilak collected. I am not aware that he has given any evidence that he collected for this particular school.

Sir EDWARD CARSON: Yes, he said that he collected for this Talegaon school, amongst others.

Mr. Justice DARLING: Yes, I think so, but perhaps, Sir John, you will ask Mr. Tilak now?

Sir JOHN SIMON: Yes, my Lord, I will ask him whether he collected for this particular school. (Sir John Simon spoke to Mr. Tilak.) My Lord, Mr. Tilak tells me that this was one of the schools that might be included in what he calls his National Education Scheme.

Sir EDWARD CARSON: Yes, he was asked at Question 1967: "Did you travel all over the country with him?—No. Q. To raise funds for the Talegaon school?—I went once with him to some place. Q. For what purpose?—To raise funds for national schools. Q. For the Talegaon school?—That was one of them. Not that one specially. Q. A school that was afterwards shut up?—Yes. Q. For teaching interference with law and order——"

Sir JOHN SIMON: If my friend wants this with reference to that, I do not mind.

Mr. EUSTACE HILLS: I was in the middle of page 35 where he is asked about the book. I do not think I shall have to refer to that. "The book contains

what I dictated," and he says later that what he dictated was true. Then turning over to page 36, about ten lines from the top of page 36: "Was it your view when you left the Vidyalaya, that the institution was properly or improperly conducted?—To some extent it was improperly conducted. In social matters there was some sort of inequality. There were non-Brahmin students. There were a good many occasions when these non-Brahmin students were differently treated; for instance, in the matter of touch. If these non-Brahmin boys touched water, it was considered by Brahmin boys to be polluted. The other point regarding the 'Gaudi' or caste mark. Some songs were taught. Those songs, I thought, ought not to have been taught to boys of tender age. These were religious songs, but the contents applied to politics. It is a fact that at the time I dictated this to my son, I can refresh my memory by saying that Professor Bijapurker couldn't bear opposition in the management of the Vidyalaya. The boys were made to learn some select pieces, selected by Professor Bijapurker and Mr. Desai. Q. What is the effect of learning these pieces? (Mr. Karandiker objects.) A. The effect of these pieces was that the boys should be self-reliant. Q. Refreshing your memory, you can say that these passages created excited feelings?—Yes. Looking at the passage I say that these passages suggested that the boys should break the chains of slavery." That is a passage on which they were taught. "I say that these passages suggested that the boys should break the chains of slavery. Some of the passages were prose. Mostly prose to begin with. Prose passages do not create as much effect as poetical passages. Patwardhan was engaged to teach music and singing. He had a select store of poems. These peoms were the poems of the Extremists. What I dictated on that occasion was correct. Mr. Patwardhan was a poet himself. Some of his poetry was devotional, and some of national character. He gave lessons daily to all the boys in Bhupali songs. In one song the Goddess of Liberty was invoked. 'Swatantrata' is the name of the goddess. Mr. Karandiker objects to the whole course of this examination and the incidents attempted to be brought

out. It seems the whole book is being copied. Only two or three lines of the song are quoted here, and not the whole song. And those three lines are: 'Calamity from the West has come to the East. Aryan Goddess of Wealth dances before the low through fear. The owner presents shoes to the thief for the sake of a piece of bread.' This refers to the old custom of servant presenting to the master shoes when the master goes out. Q. Who is the owner in this connection? Mr. Karandiker objects. The owner doesn't mean any particular person. I can't say who the owner or the thief is who is referred to. This sentence has meaning when the poet applies it in a political sense as he may have done. These Bhupali songs were of a very thrilling character. They are sung in the morning, in the afternoon, and at night, but they had another name. The deities propitiated were the Goddess of Swarajya or Self-Government, the Goddess of Boycott, the Goddesses of Swadeshi and National Education."

Mr. Justice DARLING: Then apparently goddesses can be created in quite modern times—the Goddess of Boycott, the Goddess of Swadeshi and National Education.

Sir EDWARD CARSON: This is only a translation.

Mr. Justice DARLING: There could not have been a Goddess of Boycott before there was Captain Boycott.

Sir EDWARD CARSON: This is a translation of the Indian words.

Mr. Justice DARLING: What interests me is that these are poems invoking goddesses. According to this, seeing what they were, they must have come into existence very recently. The Goddess of Boycott would be an Irish goddess?

Sir EDWARD CARSON: There are plenty of them there.

Sir JOHN SIMON: My friend ought to read the middle of the page that shows that these schoolboys were in some respects like other schoolboys: "Very little education was given in biology, chemistry or botany, and such other sciences. It was not the case as professed that the special feature of Vidyalaya was imparting education in arts, handicrafts, trades and

profession. There was no politics taught. Q. Was greater time spent in teaching biology, chemistry, &c., or in making speeches or singing songs?—To neither."

Mr. Justice DARLING: That is a very ambiguous answer.

Mr. EUSTACE HILLS: I was going to read that. There are four more lines: "I say, refreshing my memory, that about Rs. 1,000—or Rs. 1,500—had been spent in having weaving looms. Refreshing my memory I say that not even two or four students had acquired facility in weaving. About four or five looms were purchased. They were not worked, but laying neglected. There was no substantial amount of cloth made at the Vidyalaya."

Sir JOHN SIMON: In cross-examination all I want to read is the first six words on page 38: "Mr. Tilak never visited the Vidyalaya." It comes in a sentence which says: "I never spoke to Mr. Tilak about what is in my notes, because Mr. Tilak never visited the Vidyalaya, and I had no occasion to speak to him."

Mr. Justice DARLING: Is there much more of this to be read?

Mr. EUSTACE HILLS: Yes, my Lord.

Mr. Justice DARLING: Then we will hear it to-morrow morning.

Sir JOHN SIMON: My Lord, might I have this sentence added in the cross-examination. It is in the middle of the page: "Give me some idea of the course of tuition at the Vidyalaya?—Mahratti, English, simple facts of science, geography, history, mathematics, and about industry there was only carpentry and drawing."

Sir EDWARD CARSON: That was in addition to the goddesses.

(Adjourned till to-morrow morning at 10.30.)

NINTH DAY.

Feb. 19, 1919.

Mr. EUSTACE HILLS: My Lord, at page 39 is the evidence of Govind Vithalrao Jadhav. This witness says: "I am a Sub-Judge in the Ratnagiri District. I know the Plaintiff by sight. My native place is Mahad in the Kolaba District. For the last 20 years my home residence is Kolhapore. I saw the Plaintiff at Kolhapore in 1907 in the month of March. I saw the Plaintiff in the Shivaji theatre, where he was delivering a lecture. The lecture was about Kolhapore Representative Assembly. In 1906 some people of Kolhapore thought of having a representative body to advise His Highness in administrative matters, but Kolhapore Durbar did not like this, and so some people held a meeting somewhat on the lines of the Congress, and they called it the Assembly of the Representatives of the People. The meeting at the Shivaji Theatre was not one of those meetings. That was a meeting specially arranged to hear the Plaintiff. The subject of the meeting was not announced before hand." Then a little lower down: "The Representative Assembly was the subject of the Plaintiff's lecture. Q. Who were the persons who wanted the Representative Assembly at Kolhapore?—The Brahmins. The Plaintiff was in favour of the Representative Assembly. The British Rule was described as foreign, and as they are foreigners we do not want them. This is what Mr. Tilak said." "There was one magazine called 'Vishva Vritta,' published at Kolhapore, and Professor Bijapurker was its editor." Then he was cross-examined, and there is a bit of cross-examination I am asked to read at the top of page 40, about four lines down: "Since 1908 I have been reading the 'Kesari' casually, but not regularly. I was never a subscriber to the 'Kesari,' not even before I joined service. Between 1904 and 1907 I must have read the 'Kesari' whenever I got an opportunity, as, for instance, when I saw it in a library or elsewhere, that is to say, with a friend." At the top of page 41 there is a question: "Give us your view of Mr. Tilak's views at that time?—On what point? In social matters I think he was against reforms. As far as political matters went my impression

is that Mr. Tilak was anti-Government." Then, if your Lordship will turn to the last question but one at page 42, this question is asked in cross-examination: "You say in your letter, however well disposed they may be we don't want them simply because they are foreigners. Did Mr. Tilak say this?—Yes." Then turning to page 43, there is the evidence of Dorab N. D. Khandalavala. The evidence of this witness is important, and I shall have to read practically the whole of it. This gentleman says that he has certain qualifications of the Bombay University, and he is also a Rao Bahadur: "My native place is in Koporoli, in Kolaba District. I am in the service of the Kolhapore State. I joined service in August, 1900. I am an educational inspector and registrar of co-operative societies at Kolhapore. I was born in about 1873 or 1874. I was educated at the Thana High School, Wilson College, Bombay, and the College of Science in Poona. After my education I was acting lecturer in physics in the Engineering College and the Deccan College. I was in Wilson College in 1890 and first term of 1891. In those days I used to see the 'Kesari' at my private residence. I used to read the 'Kesari.' I didn't subscribe to it. Mr. Khari, with whom I lived, might have subscribed to it. In 1890 the Age of Consent Bill was being discussed. The question was one of raising the age of consent. By age of consent, I mean the age at which a girl could consent to have cohabitation with her husband or any man. The suggestion of the Bill was to raise the age. There were articles in the 'Kesari' about this which I read. Q. Was this a matter talked about amongst the students?—Yes. I knew only Mr. Tilak's name in those days as editor of the 'Kesari.'"

Mr. Justice DARLING: This does not carry the case any further. This is a thing any newspaper might discuss. What strikes me about all this about the "Kesari" and so on is we have got the "Kesari," the Jury have read it for themselves and there is no getting away from the fact, if there was a discussion as to whether Mr. Tilak was loyal to the British Government or was not, that he was twice convicted of sedition and there is what the Judge says about him which stands on

record and cannot be got rid of.

Sir JOHN SIMON: I have accepted it from the beginning, my Lord, as one of my difficulties.

Mr. EUSTACE HILLS: The real point of this portion of the evidence is to show that the "Kesari" was brought to the knowledge of and was read by students, which is one of the points relied upon in the Defence.

Mr. Justice DARLING: You have shown that.

Mr. EUSTACE HILLS: I think perhaps that has sufficiently appeared already. I can pass, I think, to page 45, which deals with the Ganpati festival: "Up to 1894 the Ganpati festival lasted only two to five days. On the fifth day the idol Ganpati was taken for immersion. There was no organised procession. Each family took its own idol. They may on such occasions meet together in the street. Q. Did the Ganpati festival up to 1894 resemble the Mohoram festival?—No, I don't think so. At Poona Hindus up to 1894 took part in the Mohoram procession. In Poona a good many Hindus took part in this procession. Q. After 1894 did as many Hindus or any Hindus take part in the Mohoram procession?—In the procession of 1894 there were very few Hindus. In 1894 the Ganpati festival assumed a new form. I am speaking of Poona only, that's where I was. The new form was almost an exact copy of the Mohoram festival. There was a Ganpati festival in 1894. In Mohoram public Taboots were made, so in this Ganpati festival public Ganpatis were made. Like the Mohoram festival, the Ganpati festival lasted for ten days. So far as I know there were no public Ganpatis previous to 1894. In 1894 there was a big organised procession. As far as I know such a thing had not been known before. It was on the 10th day or the last day the procession took place. It was in the afternoon. Previously, too, the Ganpatis used to be immersed in the afternoon. Q. What is a Ganpati?—'Ganpati' is a popular Hindu deity with the head of an elephant. I don't know whether in 1894 there were any subscriptions for the Ganpati festival. There were Melas at the Ganpati procession in 1894. The Melas played music, sang songs and also danced. As far as I know previous to 1894 there were Melas at Mohoram festivals. A 'Mela'

literally means a gathering. In connection with a procession it means a band of boys or young men playing music, dancing and singing. I heard songs at the procession of 1894. I accompanied the procession some distance. Q. Can you give the subjects of any songs you heard?—At the procession the songs contained exhortations to Hindus to observe their religion and not to lose their religion, by taking part in the Mohoram festival. There were also songs in praise of Shivaji. I do not remember any other song in praise of any particular person at the procession. Q. Do you remember having heard songs in praise of people anywhere else?—I heard such songs at Vinchurkar's Vada in Sadashiv Peth. Mr. Tilak lived there, and there was a public Ganpati. The Ganpati was in the quadrangle of the Vada. I heard songs in praise of Shivaji and Mr. Tilak. I saw Mr. Tilak at that time in the Ganpati gathering at night in Vinchurkar's Vada. It was before the Ganpati had been immersed. It was on some night. I cannot give the exact day. In 1894 I visited twice at night and on both occasions there were gatherings. It was a very crowded gathering. These meetings were in Vinchurkar's Vada, and the Ganpati was Tilak's Ganpati. The next year there was a festival and a procession similar to the festival and procession of 1894. At Mohoram festivals there were men and boys who fenced. Q. Were there boys and young men at the Ganpati festival who fenced?—Yes. They fenced and played with legim. In 1895 I was in Poona during the Ganpati festival. In 1896, 1897 and 1898 I can't say I was present at the Ganpati festival in Poona. I knew Bala Saheb Natu and Tatya Saheb Natu. I saw Balasaheb in the procession of 1894. He was with Mr. Tilak. He was a well-known man in Poona. He was supposed to be very wealthy. He was considered to be influential. I have seen boys at Poona use lathies and being taught to ride. I saw once or twice Tatya Saheb Natu teaching boys how to ride and teach singlestick fencing, and also fencing with foil. This was on Hasabin's ground in Shanvar Peth. Q. Did you ever hear of any reference to the Ganpati festival relating to the Hindu Social Reform Party?—Yes. I heard at Mr. Tilak's Ganpati

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this reference being made. The Social Reformers were denounced in verses. The late Mr. Justice Ranade the late Mr. Gokhale and Mr. Chandavarkar were denounced. Q. Besides the social reformers was anybody else denounced?—Yes, the British Government and the Mohammedans. Q. How were these songs received?—They were cheered. Q. What kind of denunciation was there; was it mild, weak or strong?—I should say these denunciations were very strong. There were a good many boys at these meetings. There were school and college students, and also young men. I stayed for a couple of hours at the meeting. I left at about twelve midnight. On the two occasions on which I was present the meeting was going on when I left. That was in 1894. In 1895 I might have gone once or twice. I am positive that I went twice in 1894, and once in 1895. I may have gone there more. With the new form of Ganpati festival I didn't sympathise." Then, my Lord, about a third of the way down page 47: "Previous to 1895, I had not attended the Congress. I know the Gowrakshana Sabha. It is a cow-protection society. I don't know whether there were any meetings of the Sabha, but I used to see collection boxes of the Society in temples in Poona and Thana. This was in the years 1893 and 1894. There is a Native Public Library at Kolhapur. It is opposite to the High School and the College. It is used by the Kolhapur public. The 'Kesari' was taken in the library." "I was Professor of Science in Rajaram College at Kolhapur when I went there. Professor Bijapurker was one of my colleagues. He was the Professor of Sanskrit. Q. From your knowledge of Professor Bijapurker what was his attitude towards Mr. Tilak and his views?—He was the staunch adherent of Mr. Tilak. I remember the Preliminary Examination at the High School at Rajaram College. Q. Was there any trouble about it?—Some students of the Matric Class were being examined. They rebelled against the High School authorities."

Sir JOHN SIMON: It is hardly worth while to object, but really what has this to do with this matter?

Mr. EUSTACE HILLS: If my friend will turn over the page he will see.

Sir EDWARD CARSON: I do not admit it has nothing to do with this matter. It may be we have already proved it sufficiently but to say that the rebellion in the schools and the scholars taking part is not any part of the matter complained of I entirely deny.

Mr. EUSTACE HILLS: At the top of page 48 there is a passage on the same point on which several articles have been read: "The boys rebelled against the high school authorities. Q. Why?—Because they were not supplied with Swadeshi paper books to answer questions. Some of them tore the foreign made books, and scattered the pieces about and left the examination hall, and collected in small groups about. The principal expostulated. He was not successful. His name was Mr. Lucy. Q. Was Professor Bijapurkar there?—He came from the first floor afterwards. He appeared to be on the side of the students." Then there is the cross-examination.

Sir JOHN SIMON: I think perhaps I might read this sentence at the bottom of page 54. The gentleman is explaining his answer, and he says: "Anti-British propaganda is a general term. It includes adverse criticism of Government's policy."

Mr. EUSTACE HILLS: Then, my Lord, I can turn right on to page 73. This is the evidence of one D. A. Prasade, who has been already mentioned. About the middle of page 73 he says: "I celebrated the Shivaji festival. The club celebrated this festival. The reading of the 'Kesari' encouraged me to celebrate the Shivaji festival." There were exercises with shield and stick: "The Shivaji festival was celebrated for three days." "The Shivaji photo was placed in our clubroom or in the theatre. It used to be garlanded. On the second day games of wrestling, Dan Patta, Bothati used to take place. All this was arranged by the members of the club. They did not take part in these games. On the third day the song of the murder of Afzulkhan was sung and Shivaji's 'Poovada.' This was at night of the third day. There was a lecture at the Chowpala Mala. Professor Bijapurker was in the chair. I was present. I don't remember what Mr. Tilak said, but he lectured on 'Swadeshi.'"

Sir JOHN SIMON: I dot not bother about any cross-

examination.

Mr. EUSTACE HILLS: Then, my Lord, I can turn to page 78 which is the evidence of one Balvant Vaman Mhaisker. He says he is a sub-inspector in the Kolhapur City, and then at the bottom of page 78: "I remember the Shivaji festival at Kolhapur in 1898 and 1899. They were celebrated in the Shivaji Theatre." Then at the top of page 79 he says: "Professor Bijapurker was sometimes present. Q. Did he take part in the festival? —He used to deliver lectures. I recognise in the photograph Mr. Phadke, and he is sitting in front of Mr. Tilak, I don't remember what the lecture was about. I remember the Ganpati festival of 1896 at Kolhapur. Before 1896 there were no Ganpati festivals in Kolhapur. Before 1896 there were no general festivals." Then three-quarters of the way down page 79: "I first saw Mr. Tilak in Kolhapur in 1901. I again saw him in 1905 towards the end of that year. One or two lectures were given by him, and I was present at one lecture only. This was in Chowpala's Mala. There were between 1,500 to 2,000 people. There must be 500 to 600 students there. Q. Did you investigate a case of a theft of ornaments of Dhondubai Latkar? —Yes. Q. Who were charged in that case?—Dattu Prasade and Vasudeo Padhye." Those are two people mentioned in the particulars of justification. Then he says at page 80: "With regard to another man convicted who is also mentioned in the Press, I know Ganesh B. Modak." He is shown a photograph and recognises him. "Professor Bijapurker is also there sitting in the middle of the lower line." The photograph was obtained in Modak's house.

Sir JOHN SIMON: There are one or two things here I wish to read. Your Lordship appreciated this witness begins by saying he is an official in Kolhapur City. He says at page 82: "Ganpati was installed before 1896. Before 1896 it used to be taken out for immersion as it was done after 1896. I was at Kolhapur but I did not see the procession before 1896 on such a big scale. Whenever I saw the Palace procession it has always been of the same description. There are nearly 75 gymnasia in Kolhapur. Generally they belong to

Mahrattas; some are Mohammedan gymnasia. Since the time I have been an officer I have been seeing these gymnasia. I don't know when they were started. I can't say whether they are of old standing. I have made no inquiries about them. In these gymnasia wrestling is taught. I have seen Dan Patta played at Kolhapur, but not in gymnasia," and so on. Then on the next page: "I did not know the objects of the Shivaji club when I visited it. I was not a student then. I visited it five or six times in 1898 and 1899. I had friends there and so I went to the Club." He gives the names of his friends. Then: "I went there merely to pass the time. Whenever I went there I did not discover anything objectionable. In Kolhapur Shivaji's name and memory are held in high esteem and reverence. His Highness has erected a temple at Kolhapur in memory of Shivaji. It was about three or four years ago. Worship is performed every day at the temple. On the birthday of Shivaji a chariot is taken out in procession from the temple to the palace. It is not a holiday, but procession is taken out similar to the procession in memory of the other ancestors of His Highness. I have not observed that schools or colleges are closed on that day. On the last Shivaji birthday procession holiday may have been given to schools and colleges, and the offices may have been closed, I am not prepared to contradict what you say if you say that there was a public holiday." Then he goes on and speaks about Sirdars wearing lockets at the marriage ceremonies: "I have seen many Sirdars wearing these lockets."

Mr. EUSTACE HILLS: Then, my Lord, there is a good deal of evidence that can be passed over, practically all putting in exhibits. Then near the top of page 90 there is formal proof that Kanhere was hanged, where Mr. Savant was present. Then I can pass to page 95, the evidence of Ganesh Viadya. He says, a little below the middle of the page: "I was tried in the High Court at Bombay, on the trial of the accused in connection with the murder of Mr. Jackson at Nasik. I was tried along with others. I was sentenced for transportation for life. I was subsequently pardoned. I was a convict

when I gave my evidence on the conspiracy case. I was living at Nasik before I was tried. I knew one Gopal Govind Dharap. He was one of the accused in the Nasik case. Dharap was my friend." Then he says he became a member of the society. Then at the top of page 96: "It was not a society open to the public. If a man was to be taken into the society, I could tell him about it, otherwise not." Then he says he was given the oath, and the oath was that a secret society had been established and what efforts were to be made. "Efforts for getting Swaraj. I and other members of the society did something to get the Swarajya. We collected some materials for making bombs."

Mr. Justice DARLING: This is a society for getting Swaraj, that is independent government?

Mr. EUSTACE HILLS: Yes, my Lord.

Mr. Justice DARLING: "I and other members of the society did something to get the Swarajya." I suppose that is the independence. Then it goes on to say what they did: "We collected some materials for making bombs."

Mr. EUSTACE HILLS: "I knew one P. L. Dandekar. He was an accused in the case in which I gave evidence. Before my case I received a gold neck ornament. I converted it into money. I sold it through my brother and got money. I gave some money to Dandekar and some was spent for this purpose." If you will just follow this bit I am reading now, Gentlemen, you will see it is connected up with some evidence which comes later on. "I gave some money to Dandekar and some was spent for this purpose. For purchasing materials, pistol and other things. I knew Raghunath Chintaman Ambdekar. He was an accused in the case I gave evidence. I got something from him. Q. What did you receive from him?—I received from him a pair of gold wristlets. As stated above, I gave them to my brother and they were sold. My brother's name is Shanker Balvant Vaidya. I got to know Ambdekar through Soman. The moneys were used for purchasing materials. Some moneys were given to Soman and his friend to purchase materials. Some moneys were used by me for going to different places. I also got another necklet from Dandekar. I

made similar use of this necklet. I went to Bombay, Aurangabad, Khanapur, Poona and other places. At Aurangabad I met Kanhere. I had a conversation with him. Q. What did you say to him?—I told him that there was a secret society at Nasik. Q. Why did you go to Aurangabad and other places?—I went to these places to purchase instruments." Five lines down page 97: "Was there a society at Poona similar to the one at Nasik?—Yes. The society at Nasik was not the same as the Mitra Mela Society. I did not know the Mitra Mela Society."

Sir JOHN SIMON: On the previous page my friend read the evidence, and quite rightly did not read Counsel appearing for Mr. Tilak had taken an objection, namely, that all these incidents should not be given in evidence because the Plaintiff knew nothing about them. I have not taken an objection either, but now is the cross-examination.

Mr. Justice DARLING: Let us understand. That was a bad objection.

Sir JOHN SIMON: I think it was, my Lord; that is why I have not taken it.

Sir EDWARD CARSON: That is why you referred to it.

Sir JOHN SIMON: It explains how the cross-examination begins, that is why I referred to it. He has just said the society at Nasik is not the same as the Mitra Mela: "As a matter of fact Mr. Tilak knew nothing of your society?—He did not. This necklet matter was in 1909, and also the wristlet matter was in 1909. I went to Aurangabad and Poona in 1909. My talk with Soman, Dandekar, Kanhere and others was in 1909. Mr. Tilak had nothing whatever to do with anything, including the journeys, the interviews and purchases of materials, &c. I was 17 years old in 1909." There was no re-examination.

Mr. EUSTACE HILLS: Then, my Lord, there is the evidence on page 97 of Ramchandra Ballal. There is only one passage I want in that: He is a police inspector in the Talegaon Circle, Nasik district, and he says an inventory was made in the house of Ganesh Savarkar and on page 98 he says: "An address to Mr. Tilak was

found. I also found a book containing the lectures by Tilak and Paranjpe. I don't now remember what the book was like. I also found a Poovada on the death of Afzulkhan. I think this must be the book. I don't find any signatures of the Punch on it. I also found 175 copies of Joseph Mazzini's life by Vinayak Savarkar similar to Exhibit 332." That has been already put in and referred to.

Mr. Justice DARLING: Has anyone got a copy of the life of Mazzini, which Savarkar wrote ?

Sir EDWARD CARSON: Yes, my Lord, it is in one of the books. The book is in Mahratti.

Mr. Justice DARLING: There are lives of Mazzini in English, but I understand that this Savarkar wrote a life of Mazzini for the natives in Mahratti.

Sir EDWARD CARSON: Yes, my Lord, it was handed to Tilak when he was in the box.

Sir JOHN SIMON: Your Lordship will remember your Lordship ruled at that stage at any rate that it was not a matter which came into this trial. I myself do not know what is in it.

Sir EDWARD CARSON: No, your Lorship only ruled I could not cross-examine Mr. Tilak about it at the time.

Mr. Justice DARLING: There is no question of putting it in, I only asked if it exists.

Sir EDWARD CARSON: It has been produced in Court.

Mr. Justice DARLING: A man need not necessarily be hanged because he has read the life of Mazzini. I have read one myself.

Sir JOHN SIMON: The Plaintiff need not necessarily lose a case because somebody else has a book in his library.

Mr. Justice DARLING: Why I asked was because you can write the life of the man from several points of view. In one life they picture a very good man, and in the other life a very bad man.

Sir EDWARD CARSON: Does your Lordship want to see the book ?

Mr. Justice DARLING: No, it is not evidence. I have read all about Mazzini that I want to.

Mr. EUSTACE HILLS: I can pass on now to page 110. There are just two passages from the evidence of of Mr. Suleman Wahed, a partner in the firm of Messrs. Ludha Ebrahim & Co. He says: "I remember something about the riots in Bombay in 1893. There was some activity amongst the members of the Cow-Protection Society." "The Mohammedans were against the members of the Cow-Protection Society. Mohammedans have no music in their mosques. According to our religion there must be no music in the mosque, nor music should be allowed to pass by the mosque. In the Hindu temples there is music every day. There was some dispute, not a great deal, about the music in processions near the mosque."

Mr. Justice DARLING: There was a question asked about the difference between the Mohammedan and the Mahratta. This man clears it up. "There is a religious obligation during Bakri Id time for a Mohammedan to kill a goat or a cow or a camel. A cow or camel for seven men and a goat for one man." That is the Mahommedan way of dealing with it.

Mr. EUSTACE HILLS: It rather follows, what he says immediately after: "The Mahommedans were against the members of the Cow-Protection Society." Then there is the cross-examination.

Sir JOHN SIMON: At page 111, about ten lines down, this gentleman says: "In some parts of the country cow-protection societies are of great standing. They were in existence long before 1893 or 1894."

Mr. Justice DARLING: This man says he is a Sunni Mahommedan; he is not a Hindu.

Mr. EUSTACE HILLS: A little below that, my Lord, he says: "Before 1893 I do not remember noticing any trouble regarding music near mosques nor any trouble prior to 1893 on account of the pre-existing Cow-Protection Society." Then Raghunath Gosavi on the same page says. He is a pleader and he says before he went to Malegaon he was a resident of Nasik. Then at the bottom of the page "There was another brother of the Savarkars. His name is Narayan. He joined the Mitra Mela in 1905 or 1906." "I gave evidence in the Special Bench case in the High Court." That was one

of the special cases. "V. M. Bhat and V. and N. Savarkar were also the accused in this case. Q. When the Mitra Mela was first started what was its object?—Religious and industrial development. The original objects remained, but other objects came in subsequently. Q. What other objects were subsequently added?—Getting rid of annoyance caused by Government relating to taxes. Q. How is this annoyance to be got rid of?—By recourse to resistance if Government declined to listen to persons proposing constitutional changes. By resistance I mean collecting arms. The arms were to be paid for. Money was to be got by raising subscriptions. The society held meetings. Since 1906 some people were bringing forward propositions. The changes were complete in 1908. I know Vinayak Savarkar left for England in 1906. The changes began before he left for England. At the society's meetings lectures were given and books were read. Different members presided at different meetings. A member would read on any subject he liked. Q. What did Vinayak Savarkar do?—He used to read the Life of Mazzini. It was in English, but he used to translate it. Generally there used to be one lecture. Various members lectured at different times. Vinayak Savarkar was one of the lecturers. Q. What were his subjects?—Mostly on subjects as to how India would get liberty or independence. There used to be discussions for getting arms. Q. Was it suggested from where they might be got?—From France and the Nizam's Dominions." Then at the top of page 113: "After 1906 a gymnasium was opened to learn wrestling, Dan Patta" and other things. Then he refers to a book written by Ramdas, the teacher of Shivaji. The "other book read was the life of Vasudev Balvant Phadke. This Phadke was a rebel, during the regime of British Goverment. He was against the British Government. Q. In 1906 did the society divide itself up?—Yes. There used to be three divisions. The lowest division was No. 3. They were to sing songs at the Ganpati festival. Division No. 2 was to impart and receive physical training. Division No. 1 was to fix the manner in which things were to be done and make Divisions 2 and 3 to act. To prepare the minds of people and to take steps to prevent oppression

by Government. For the most part I was in Division No. 1. I also went to the 3rd Division, being an original member. Before belonging to No. 3 we had to take the oath as follows: 'Remembering my parents and my tutelary deity for the elevation of my country and for independence and liberty, I shall try as much as possible.'" Then: "There was a Shivaji library at Nasik founded in 1903." Then a little lower down: "I saw Mr. Tilak at Nasik in 1906 during the Ganpati festival. The Mitra Mela sang songs. I think some of these songs were printed and sold in Nasik. Most of them were composed by Darekar. Q. Were they sung in the presence of Mr. Tilak or not?—Some were sung in the presence of Mr. Tilak."

Sir JOHN SIMON: Page 114 at the bottom of the page: "In 1906 the Mitra Mela at Nasik invited Mr. Tilak for a Pan Supari party. I was present on the occasion. Some of the Members of the Mitra Mela spoke on that occasion. Mr. Tilak replied to them. Q. Did Mr. Tilak warn them on that occasion?—He admonished them. Q. He told them to work constitutionally and legally?—Yes, he did." Then there is a reference to some newspaper. "The public was not allowed. The meeting was limited to the members of the Mitra Mela. Q. When the meeting was not open to the public, it was a secret meeting?—Yes. Q. Was there a policeman present as a detective or spy?—There was one person present. We did not know who he was. Subsequently we came to know that he was a policeman, and his name was Amar Singh. I was a witness in the Nasik case." The case that means was I think in 1906: "There were other papers in the library like the 'Venkateshwar Samachar,' 'Dnyan Prakash,' 'Sudharak,' 'Indu Prakash' was not there. Except for the Pan Supari meeting, Mr. Tilak never visited the Mitra Mela, and had nothing whatever to do with the movements or objects of the Mitra Mela."

Mr. EUSTACE HILLS: Then the evidence of Gopal Gole at the bottom of page 115: This is one of the pieces referred back to the bit I read you before about the gold. Mr. Gole says he is a dealer in rice: "There was another man living in the same house with me called Ragunath Chintaman Ambdekar. This was nine years

ago. While he was living in my house a theft was committed of a pair of gold bracelets."

Sir JOHN SIMON: It all happened in December, 1908.

Mr. EUSTACE HILLS: At the top of page 116: "The theft was committed in the portion of the house occupied by me. The gold bracelets were my property. This happened in December, 1908." Then a little lower down: "I never got the gold bracelets back. I gave evidence in the High Court in the Nasik conspiracy case." Then on the point there is one passage in which the next witness Joshi said he was agent of the Oriental Life Assurance Company, Ltd., in Nasik—"In 1909 I had a nephew called Purshotam Luxmon Dandekar. In 1909 I and Dandekar were living in the same house at Nasik in Aditwar Peth. Myself, my sister and one tenant were living together. Dandekar had gone to Poona for some time. When he went to Poona I went there too. There was a tenant in the house of Dandekar, and a theft had been committed in his room. Dandekar was suspected, and so I went to Poona."

Mr. Justice DARLING: Is all this to show how the man got the bracelets that he gave to the man who bought the pistols?

Sir EDWARD CARSON: Yes, my Lord; it arises on the part of the alleged libel where it says dacoities were practised for the sake of Swaraj. Your Lordship sees the evidence was as to why they did: that is my point.

Mr. EUSTACE HILLS: There is one further piece of evidence at the top of page 117, one line, the witness says: "A 'Saree' or gold necklet was stolen."

Sir JOHN SIMON: There is nothing in cross-examination I wish to read.

Mr. EUSTACE HILLS: Then if your Lordship will turn to page 118a Mr. Jogleker says he is a broker in gold and silver, and he lives in Bombay: "I gave evidence in the Nasik Special Bench cases in the High Court. I knew the accused Shanker Balvant Vaidya"—that Gentlemen, is the brother of Ganu Vaidya, whose evidence you have had—"in that case. He met me in the bazaar some little time before I gave evidence in the Special Bench cases. He was alone. He wanted to sell some

gold pieces of bracelets and saree. I went to Dosabhai's shop and there we melted the gold pieces. We sold the gold in the bazaar. As broker I was present. The money realised was taken by Shanker."

Mr. Justice DARLING: Then he says what they realised—about Rs. 250 to Rs. 300.

Mr. EUSTACE HILLS: Then at the top of page 119. This witness, M. B. Tavaria; he says he is manager of a shop at which gold and silver are melted: "I knew the accused Shanker Balvant Vaidya in that case. Jogleker came with Shanker to my shop. There were some pieces of gold and pieces of gold saree which they wanted to have melted. I melted them. I cannot remember now the value of the gold melted."

Sir JOHN SIMON: There is nothing in the cross-examination, but you have passed over one sentence at the top of page 118, about the registration of the Paisa Fund—the seventh line down: "The Paisa Fund was registered on the 16th October, 1905, under Act 21 of 1860. A consolidated report of seven years of the Paisa Fund is produced and put in. The memorandum, amongst others, is signed by Mr. Tilak."

Mr. EUSTACE HILLS: At page 119 there is one small portion of the evidence of Mr. Kelkar, who says he had originally filed a warrant to appear on behalf of Mr. Tilak: "I am a very old friend of Mr. Tilak. I have been with him for about 20 years." Turning to page 120, little more than halfway down, this witness says; "Mr. Tilak has never ceased to be the proprietor of the 'Mahratta' and the 'Kesari.' The 'Kesari's' circulation has increased much. It is the biggest vernacular paper." Then four lines below that: "I know Vishnu Mahadev Bhat. He indexes the files of the papers 'Kesari' and 'Mahratta.' He may have been here once or twice." That is in the Court where the evidence was taken: "He was convicted for sedition in one of the Nasik cases."

Sir JOHN SIMON: The first question in cross-examination: "From the time of Mr. Tilak's arrest in 1897 till his conviction he took no part in writing with regard to the 'Kesari' or the 'Mahratta.' Even during the period he was admitted to bail. I always used my own words and my own ideas when I was in charge. The

'Kesari' is largely circulated in the Maharashtra among the Mahratti-speaking public, and also in the native States where Mahratti is spoken. In the other provinces like the Punjab and Bengal and Gujrat it is very rarely read." I am not quite sure whether you mentioned in chief the passage in which it is stated Mr. Tilak ceased to appear as publisher of the "Mahratta" in September, 1897.

Mr. EUSTACE HILLS: Yes. He ceased for the time. I can turn then, my Lord, to page 123. This finishes the evidence about the gold ornaments. This is the evidence of one Diveker, who says: "I have a shop in Bombay, and I live in Bombay. I had a shop in 1909. I knew a man called Shanker Balvant Vaidya. He was the manager of the Nasik Swadeshi Co-operative Trading Co., Ltd., and I did some business with him. He sold some gold to me. From my books I am able to find this out. It was on the 26th April, 1907, that he sold some gold worth 179.5 rupees. On the 13th of June, 1909, he sold some gold ornaments worth 375 rupees. It was a necklace that he sold to me. I don't remember whether he was alone on either occasion when he sold the gold."

Sir JOHN SIMON: I do not want anything.

Mr. EUSTACE HILLS: Then, my Lord, turning to to page 124, there is the evidence of Danappa Shidramappa Walve, who says that he was at Nasik in 1908 or 1909, and was a small child when he went to Nasik, that he joined the Mitra Mela at Nasik in 1907, that he knew Ganesh Savarkar at Nasik, and that he joined the Society, the Mitra Mela, at the beginning of 1907 or at the end of 1906. He says in order to be admitted he had to take an oath, and the oath was taken by Ganesh Savarkar. The oath was: "I will make attempts for the sake of religion and the country and the Swadeshi movement." The object of the oath was to awake patriotic feelings. "I took the oath at Baba's house—that is Ganesh Savarkar's house.

Mr. Justice DARLING: He was asked what the attempts were: "To make attempts for the sake of religion and the country and the Swadeshi movement." "By attempts, I mean reading newspapers to make movements to buy Swadeshi goods, etc."

Sir JOHN SIMON: A little lower down, would you read.

Mr. EUSTACE HILLS: "As a member of the Mitra Mela I began to use Swadeshi clothes and Swadeshi sugar. I began to read the newspapers like the 'Kal.'"

Mr. Justice DARLING: "I didn't understand much the language of the 'Kesari,' as it was high. I did nothing besides this. From my boyhood I have been a gymnast." He was not one of the intellectuals.

Sir EDWARD CARSON: He was on the military side.

Mr. EUSTACE HILLS: Then he says that when he joined the Mitra Mela one of the members was Ganesh Savarkar. Then I think I can pass to about two-thirds of the way down page 125: "I saw Mr. Tilak in Nasik in 1906 during the Ganpati festival. Q. Were you present at the Secret Meeting between Mr. Tilak and the Mitra Mela? (Mr. Karandiker objects).—I know of no secret meeting, but there were other public meetings in the bazaar." Then: "I went to some of these meetings. I know songs were sung at Mr. Tilak's meetings, but I can't remember them. I was a member of the Mitra Mela in 1907 during the Ganpati festival when Mr. Paranjpe came and songs were sung by the Mitra Mela." Then he says at the end of his examination on page 126: "I knew Mr. Vishnu M. Bhat. He used to attend the Club. I can't say whether he was a member. There were lectures at the Mitra Mela on Ramdas, Shivaji, Mazzini, Swadeshi and Boycott."

Mr. Justice DARLING: Who was Ramdas?

Mr. EUSTACE HILLS: The spiritual teacher of Shivaji, my Lord.

Mr. Justice DARLING: "There were lectures at the Mitra Mela on Ramdas, Shivaji, Mazzini, Swadeshi and Boycott"?

Mr. EUSTACE HILLS: Yes, my Lord.

Sir JOHN SIMON: Again the cross-examination is commendably short: "Mr. Tilak never wrote to me on any subject. Mr. Tilak had no connection with the Mitra Mela regarding its motives or movements or any matter referred to in my examination."

Mr. EUSTACE HILLS: Then in re-examination he

says: "We used to say 'Tilak Maharaj ki Jey' which means victory to Mr. Tilak, and we relied on Baba and Gore. We were boys."

Now, my Lord, we pass to the evidence taken on behalf of the Plaintiff which was not put in. There is only one thing we desire to put in on behalf of the Defendants which is the cross-examination on page 141 of Mr. James Adolphus Guider. He says in his cross-examination which begins on page 141: "I was the supervising officer in the case relating to Mr. Jackson's murder. There were three Nasik cases. First, there was the murder case, then there was the conspiracy case, and then there was the Savarkar case. I supervised all the three cases. I was pretty well acquainted with the political condition of Nasik. Q. Were there secret societies there and elsewhere?—There were branches at Poona. Q. What did you ascertain the object of these secret societies to be? (Mr. Karandiker objects)?—To overthrow the British Government and gain independence for India. Q. Was it in a peaceful manner? (Objected to)?—No, it was carried out by the use of violence and force. Q. Can you tell me whether the Shivaji Cult was strong in Nasik? (Objected to)—As far as my inquiries went, it was strong. It was strong amongst the Brahmins. In the Nasik conspiracy case a large number of the accused were very young men. Many of them students. They had no occupation. Practically all the accused were Brahmins, except one. I knew Mr. Tilak for a long time. Q. Is he a man who has a large following of young Brahmins in Poona and elsewhere. (Objected to)?—Yes. The 'Kesari' is the most influential Mahratti paper in the Presidency. It is widely read by the Mahratti-speaking people throughout the Presidency." Then there is reference to a photograph in which Mr. Tilak appeared and also to Mr. Lala Lajpatrai. Then he is asked: "Is Lala Lajpatrai a peaceful citizen. (Objected to)?—He belongs to the Punjab, and has had trouble with the law. He is accused of being a seditionist, and he was deported. Bepin Chandra Pal is a Bengali. I don't know of personal knowledge that he was the editor of the 'Swarajya.' He is a well-known political agitator. Exhibits Nos. 411 and 420 are the same. The

pictures at the back are that of Shivaji. On the back of Exhibit No. 410 is that of Shivaji, and also on the front of No. 421. The Vernacular word for independence used amongst secret society people is Swatantrya. It is a Mahratti word. It is not the same as Swarajya. Swarajya means one's own Government. Q. Was the cult of Shivaji mixed up with the anti-British movement? (Objected to.)—A. Yes, to a certain extent." Then, my Lord, at page 143, half-way down, there were put in the confessions of Ambdekar and Dandekar.

Sir JOHN SIMON: You need not trouble with that.

Mr. EUSTACE HILLS: That completes the evidence, my Lord.

Sir EDWARD CARSON: Now, my Lord, there are one or two matters which I propose to have read. The first I propose to read in evidence is that which has been put in subject to an objection. I propose to read an article in the "Kal" newspaper of the 15th May, 1908. That, my Lord, is in Volume 2 at page 1052.

Mr. Justice DARLING: Has this been objected to?

Sir EDWARD CARSON: It has, my Lord. What we have agreed so as not to go through each one particularly is, that they are all admitted to be technically proved subject to objection to any of them being given in evidence.

Sir JOHN SIMON: The position at present is that it is not in evidence. At an earlier stage of the trial objection was taken to it being put in evidence. The Gentlemen of the Jury will in the meantime make no reference to the article, because I take a general objection. My submission is this. Would your Lordship turn—

Sir EDWARD CARSON: I have not yet put my side of it, which will take some little time. It is a very important point. If my friend likes to go first by all means do so.

Sir JOHN SIMON: Not at all. I thought I was asked whether I took objection?

Mr. Justice DARLING: I did not realise exactly what was being done. I gather that it was an article in the "Kal" newspaper, and I simply asked whether objection was being taken to it.

Sir JOHN SIMON: Yes, my Lord, I take objection to it.

Mr. Justice DARLING: The case has gone on so long that I do not remember exactly these things. Now, Sir Edward, what do you ask me?

Sir EDWARD CARSON: I ask your Lordship to allow me to read this evidence, and I will tell your Lordship my reasons for asking that. In the first place your Lordship will remember that the editor and proprietor of the "Kal" newspaper was a Mr. Paranjpe, and I will give your Lordship the statement which refers to his connection with Mr. Tilak. I want to show why it is essential on one of the libels complained of, and on one of the specific matters. My Lord, on page 62 of the Defendant, Sir Valentine Chirol's, book, your Lordship will find the second libel, which deals with the allegation that it was Tilak's Press that was calculated to incite to the murder of Mr. Jackson. Your Lordship will see at page 62, they set out the confession of Kanhere: "I read of many instances of oppression in the 'Kesari,' the 'Rashtramat,' and the 'Kal,' and other newspapers. I think that by killing sahibs (Englishmen) we people can get justice. I never got injustice myself nor did any one I know. I now regret killing Mr. Jackson. I killed a good man causelessly. Can anything be much more eloquent and convincing than the terrible pathos of this confession? The three papers named by Kanhere were Tilak's organs. It was no personal experience or knowledge of his own that had driven Kanhere to his frenzied deed, but the slow persistent poison dropped into his ear by the Tilak Press. Though it was Kanhere's hand"—and so on. It is complained that these papers were not Tilak's; that is, that the "Kal" was Paranjpe's and not Tilak's. But my Lord, it will be for the Jury to say what was the meaning of the "the Tilak Press." My Lord, my object is now to show that the "Kal" was one and I will show your Lordship the connection between Paranjpe and Tilak.

Mr. Justice DARLING: Where do you get the words "Tilak Press"?

Sir EDWARD CARSON: In that passage: "But the slow persistent poison dropped into his ear by the Tilak

Press." My Lord, to show that it does not mean that the "Kal" was Mr. Tilak's, if your Lordship will look back at page 52 of this book, in the second paragraph your Lordship will see that he never refers to Tilak under the "Kal," but, on the contrary, he says: "Tilak's own prestige, however, with the 'advanced' party never stood higher, either in the Deccan or outside of it. In the Deccan he not only maintained all his old activities, but had extended their field. Besides the 'Kal,' edited by another Chitpavan Brahmin, and the 'Rashtramat' at Poona, which went to even greater lengths than Tilak's own 'Kesari,' lesser papers obeying his inspiration had been established in many of the smaller centres." Your Lordship sees he there says that the "Kal" was edited by another Chitpavan Brahmin.

Mr. Justice DARLING: And that the lesser papers obeyed the inspiration of Tilak.

Sir EDWARD CARSON: Yes, my Lord: "lesser papers obeying his inspiration had been established in many of the smaller centres." My Lord, the connection between Paranjpe and this gentleman——

Mr. Justice DARLING: Paranjpe was the editor of the "Kal," was he?

Sir EDWARD CARSON: Yes, my Lord. Mr. Tilak told us in his evidence that Paranjpe had been a friend of his for many years, that Paranjpe was prosecuted for sedition for an article in the "Kal" and that at the very time he himself was arrested for sedition and for the articles with referenee to the bombs which he had issued, that Tilak assisted Paranjpe in the preparation of his defence. Of course this question had not arisen at the time. My Lord, we find a very close connection between Tilak and Paranjpe. In Volume 2, at page 507, we find an account of the Shivaji festival in which Tilak and Paranjpe took a prominent part. I am giving it to your Lordship briefly without going through the books, because I have had it taken out. In Volume 2, at page 645, Tilak and Paranjpe were found associated at the meeting for the purpose of burning English goods. At page 652 of the same volume Tilak and Paranjpe were together at a special meeting in Bombay in connection with the Swadeshi movement. At page 658 we find

Tilak and Paranjpe travelling together to Lonavla to address a meeting together. At page 682 we find Tilak and Bhopatkar addressing a public meeting of the Mofussil students on Swadeshi. Then at page 702 we find Tilak and Paranjpe at a meeting in connection with the "Maharashtra Boarding" in the Maharashtra school, and Paranjpe explaining how institutions like the "Boarding House" are useful in the matter of fashioning the thoughts of the boys into polished and patriotic thoughts. Also we have, at pages 904 and 905, Tilak and Paranjpe taking part in the Shivaji festival at Poona. At page 988 Tilak and Paranjpe are together at the congress at Surat. Your Lordship will remember that the articles in praise of bombs and assassination for which Mr. Tilak was prosecuted were in the month of June, 1908. The articles for which Mr. Paranjpe was prosecuted were in May, 1908. My Lord, having regard to the fact that one of the things complained of is that we called these Tilak's papers. On a fair reading of not only that passage but other passages to which I have referred, these papers adopted and accepted his inspiration of the policy, and I propose to read this article to show you that that was so as a justification for saying that this is not a libel.

Mr. Justice DARLING: This passage, on page 52, about the papers obeying Tilak's inspiration is not complained of as a libel. You have to go to page 62 and rely on that, do you not?

Sir EDWARD CARSON: Yes, my Lord, page 62, and this is complained of over and over again. Sir John Simon has asked: "Was it not the fact that the 'Kal' was not his paper," which is admitted even in the book: "The slow persistent poison dropped into his ear by the Tilak Press." That is one thing, and then the three papers named by Kanhere were Tilak's organs.

Mr. Justice DARLING: You say that the "Kal" was one of the papers which may fairly be taken to be included in the words: "Tilak Press."

Sir EDWARD CARSON: Yes, my Lord.

Mr. Justice DARLING: Of course it will be for the Jury to say whether fairly it can be so construed.

Sir EDWARD CARSON: Yes, my Lord. It is for

the Jury to say whether that is the meaning of this.

Mr. Justice DARLING: If they cannot suppose anything of the sort I ought to exclude it.

Sir EDWARD CARSON: Yes, my Lord. We often talk here of the different great statesmen of the country, and say: "So-and-so's Press," but having regard to the two passages taken together, it is quite clear it was not meant that he was editor of the "Kal" because he has stated in the previous page that that is not so. I therefore submit this for the purpose of showing that this was his Press in the sense that it was running his policy and his propaganda.

Mr. Justice DARLING: In this country some newspapers are Free Trade papers and some are Protection papers. Suppose a man named Brown wrote an important article in the protection interest, and you said So-and-so wrote and said that persistent poison was dropped into his ear by Brown's Press, not one of the papers that Brown edited but simply a paper that took the same view of Protection as the paper that Brown edited did, do you say that that would be good enough?

Sir EDWARD CARSON: I do not think that that is an analogy, my Lord. It is not necessary to argue that, because those are not the facts here. Your Lordship sees that Mr. Tilak was plainly a leader in his policy. If a leader had a paper, and there were other papers co-operating, and you find the two of them going round together on platforms and pronouncing the same policy then, my Lord, I should say certainly the paper in the case your Lordship puts should be admitted. I submit, my Lord, that there is no other way in which it could be admitted, but here it is perfectly plain that he has stated that Paranjpe was the editor of the "Kal," and it is for the Jury under those circumstances to say whether in talking of the Tilak Press he did not mean the Press that was inspired by Tilak. It will be for the Jury on the whole circumstances of the case to say whether that is so or not.

Sir JOHN SIMON: My Lord, there are two objections to the admission of this evidence which I wish to submit to you. Before doing so I wish to point out that though my learned friend at the moment is asking

for your Lordship's ruling in his favour to read to the Jury one particular article of the "Kal," it would appear from his submission that he is contending that he is at liberty to read any and every article in the "Kal" newspaper.

Mr. Justice DARLING: I think he must, because I have read this passage: Kanhere said: "I read of many instances of oppression in the 'Kesari,' the 'Rashtramat' and the 'Kal' and other newspapers." He did not say: "I read in the 'Kal' the article of the 15th May." Therefore the argument would undoubtedly, if it is a good one, cover anything in the "Kal" over a wide period.

Sir JOHN SIMON: At any rate it would have a wide application.

Sir EDWARD CARSON: Your Lordship will not take me as assenting to that, even if your Lordship lays it down.

Mr. Justice DARLING: No.

Sir EDWARD CARSON: That is not the application I have made.

Mr. Justice DARLING: I know it is not, but what Sir John Simon says is that the reasons given would cover any article in the "Kal."

Sir JOHN SIMON: I do not say any, but at any rate a wide range.

Sir EDWARD CARSON: It would go back to the year 1.

Sir JOHN SIMON: I am saying that there are two objections, as it seems to me, which might properly be taken on behalf of the Plaintiff to the admission of this evidence. I point out that the argument addressed to your Lordship by my learned friend, not the request he is now making, but the argument logically, would apparently cover the admission not of one particular article, but it might be of a wide range of articles I quite agree, and therefore at this stage of the case it is a very formidable application. My Lord, I say there are two objections to this application, and the first is this. My learned friend has referred to a number of things about Mr. Paranjpe, but he has not referred to Mr. Paranjpe's own evidence at all for the Defendants out in India and read

by Mr. Eustace Hills this morning. If your Lordship would turn to page 30 the position is now that on that evidence my learned friend's application is, as I submit, much less well founded than it was when he made a similar application earlier in the case. At page 30, this is what Mr. Paranjpe says: He was called by the Defence. It is about two-thirds of the way down the page: "The Plaintiff never contributed to my paper. He never sent anything for publication in my paper. He never asked me to write on any particular subject. He never asked me to express any particular views in my paper. He never suggested to me to write on any subject in my paper. My paper 'Kal' was not connected proprietarily with the 'Kesari.' I was the sole proprietor of the paper 'Kal.' My paper was never connected with the 'Kesari' pecuniarily. There is no truth in the suggestion that my paper 'Kal' was the Plaintiff's organ." That is the Defendant's witness: "Did your paper 'Kal' disseminate the same doctrines as the Plaintiff's with the same purpose and for the same object? —No. My paper was independent of the 'Kesari' or the Plaintiff. There is no combination or conspiracy between my paper and the Plaintiff's. There was no manner of connection between the 'Kal' and 'Kesari.'" I say my first ground of objection, therefore, is this—that the Defendant's own evidence, which they have produced in their defence of this case, completely disposes of any foundation which there otherwise might be for this application. The second ground is that this is an action for libel—six specific complaints, and in regard to each one of them the Defendant sets up a justification. It is both common sense and very well-established law that in their justification they must, especially if they ask to do so by orders for particulars, set out with reasonable detail what is really the ground upon what they say is true, and, my Lord, as was pointed out to your Lordship as long ago as the Third Day of the case—I am sorry to think that is a long time now, and although we have had reams and reams of particulars, there has never been set up in this case that Mr. Tilak is the head of a conspiracy at all—never—that of all things is the thing——

Sir EDWARD CARSON: Would my friend look at page 7? What it says is this: "The three papers named by Kanhere were the Plaintiff's organs: the 'Kesari,' in that it was owned, edited and published by the Plaintiff, the 'Kal' and the 'Rashtramat' in that, amongst other things, they disseminated the same doctrines as the Plaintiff, for the same purpose, and with the same objects." If that is not conspiracy, I do not know what is.

Sir JOHN SIMON: I submit it is not conspiracy. I had that in my mind, and I was going to refer to it. I was saying, and I repeat with great respect, there is no allegation here that Mr. Tilak is the prime mover in a conspiracy. Of course, if such an allegation had ever been put on the record the first thing we should have been entitled to would be to ask you to define this conspiracy and define its dimensions, and what is it you are going to say. What is said here is this, and it is very material to look at it now. It is said the "Kal" disseminated the same doctrines as the Plaintiff. The Defendant's own witness has stated that his paper, the "Kal," did not disseminate the same doctrines as the Plaintiff. There is his answer—"for the same purpose" —he has given the answer that it was not for the same purpose; and "with the same objects" he has given the answer that it was not for the same objects. I quite admit there is evidence quite accurately produced by my learned friend which does show that Mr. Tilak and Mr. Paranjpe were on friendly terms. I will call attention to one other thing that is really the foundation as matters now are, and the only foundation upon which this application could be made. My learned friend's own witness has put him out of court on any application of this sort. When I say that my friend was not at the moment quite accurately reproducing what the evidence was, it is this. At the top of page 106 of the Shorthand Note it appears from what Mr. Tilak said that my learned friend, Sir Edward Carson, thought he was actually in the same room with Mr. Paranjpe when he, Mr. Tilak, was arrested, but Mr. Tilak goes on to say at the top of page 106 in answer to Question 536: "I was finding out the barrister and finding out about lending him money,

that was the help we rendered. We did not read the articles. Q. Is that the way you were helping him?—Yes." On those grounds I submit to your Lordship that my learned friend has not laid a foundation upon which he is entitled to bring in this article, and, so far as I can see, applying such an application logically to other articles.

Sir EDWARD CARSON: My Lord, with great respect I submit this with some confidence to your Lordship, as at all events according to my view it is an important fact in the case, and also it will probably have something to do with some further application to be made, I should like to say a little more with regard to it. Will your Lordship first look at the Statement of Claim. Your Lordship will see there that having set out what I have already read to your Lordship in the book as being the matter complained of in the innuendo at page 5, they say this: "And that the said three newspapers were owned by or under the control of the Plaintiff for some length of time immediately before the said murder was committed, and that the Plaintiff had written or published or caused to be written or published in the said newspapers, for the purpose of causing such crimes to be committed, matter alleged to be contained in the said newspapers which had urged and induced the said Kanhere to commit the said murder." The innuendo put there on the words, and this is one of the things the Jury have to find, was that we alleged that the newspaper "Kal" was owned or under the control of the Plaintiff. My Lord, we deny that we ever alleged any such thing, and it is for the Jury to say what the meaning of the language was.

Sir JOHN SIMON: That would not be got rid of by reading an article in the "Kal."

Sir EDWARD CARSON: Why not? If you will let me go on: "The said three newspapers were owned by or under the control of the Plaintiff." What we say is, if your Lordship would look at the Particulars at pages 6 and 7: "The three papers named by Kanhere were the Plaintiff's organs"—that is in the sense we use them—"the 'Kesari' in that it was owned, edited and

published by the Plaintiff, the 'Kal' and the 'Rashtramat,' in that amongst other things, they disseminated the same doctrines as the Plaintiff." My Lord, how can you find out whether it was owned in that sense unless the Jury are allowed to see the article? It is not as if this was using the article against Mr. Tilak as if he had written it, and as if he were the owner of the paper. They disseminated the same doctrines as the Plaintiff for the purpose and with the same objects. Then he goes on: In that after his conviction in 1908 they hailed him as a national hero who had been unjustly condemned; in that subscribers to a defence fund for the Plaintiff were asked to send their subscriptions either to the 'Kesari' or to the 'Rashtramat' indiscriminately, and in that the Plaintiff was in close and friendly relations with Mr. Paranjpe, the editor of the 'Kal.'"

My Lord, the only answer that I understand my learned friend gives to this is that he reads a passage at page 30 of the Notes of the Evidence taken on Commission, in which he says: "In writing my notes, editorial columns or leaders, or in any other contributions, I never consulted the Plaintiff. The Plaintiff never contributed to my paper. He never sent anything for publication in my paper. He never asked me to write on any particular subject. He never suggested me to write on any subject in my paper. My paper 'Kal' was not connected proprietarily with the 'Kesari.' I was the sole proprietor of the paper 'Kal.' My paper was never connected with the 'Kesari' pecuniarily. There is no truth in the suggestion that my paper 'Kal' was the Plaintiff's organ." My Lord, that is exactly the point which the Jury have to decide under the circumstances I have already referred to. We have never said that the paper was in any wise connected in the way which is stated there. That was never the point. What we said was that the "Kal" amongst other things disseminated the same doctrines as the Plaintiff for the same purpose and with the same object. The connection between Paranjpe and Mr. Tilak becomes important as to the objects with which they were doing it. When the Jury have seen the article they know the article was dissemi-

nating the same objects and they put that together with the close connection which we have shown in the elucidation of the connection between Paranjpe and the Plaintiff, and then they say if you take the right meaning, having regard to the facts you have already stated, that the "Kal" was not edited by the Plaintiff or obeying his inspiration.

My Lord, the Jury will be able to say that, after all, what it means. My Lord, may I point out this, as my learned friend has referred to the evidence of Mr. Paranjpe. It is really a quotation from the "Kesari" which he was examined about: "I can't say whether the following is correct"—I do not want to state it if it is not accurate.

Sir JOHN SIMON: Will you please read it?

Mr. Justice DARLING: What are you now reading from?

Sir EDWARD CARSON: From Paranjpe's own evidence, my Lord. It was shown to me and I noticed he says when asked if this is correct? "I can't say whether the following is correct." I would rather read it from the article. It is simply to show the nature of the view. This is an account taken of the meeting at Nasik, which is at page 627 of Volume 2. It says: "Lokamanya (revered by people) Paranjpe exclaimed: 'This address which is received and the reception which is given, I offer at the feet of my best Guru (i. e. preceptor or teacher) Mr. Bal Gangadhar Tilak.' His speech on that occasion was also very forcible." Really, my Lord, I put this to your Lordship as a serious point in the case. How are the Jury to understand what is meant by these words? How are they to know unless your Lordship is prepared to direct that the words can only mean that he owned the Press?

Mr. Justice DARLING: The innuendo says that they: "were owned by or under the control of the Plaintiff for some length of time immediately before the said murder was committed." That is what the innuendo is.

Sir EDWARD CARSON: Yes, my Lord, that is the innuendo. How on earth are the Jury to find out? It is not contended, I do not contend, and we never

contended all through this case, that that was so. We say it has an entirely different meaning, and we say we show in another part of the book that it was not so, that he did not own it, and that the "Kal" was not his paper, but then when the Jury come to that conclusion, as, of course, they must, as it is there on the face of the same book which is being challenged, how are they to come to a conclusion as to what the real meaning of it is, and decide whether our construction of it is right unless they see the article? My friend used one of those, if he will allow me to say so, wide propositions which never demonstrate anything, in saying my application meant that any article that ever appeared in the "Kal" I could claim in the same way to put in. Not at all. The only one I have asked to put in up to this is this one, and it is quite time enough to deal with it when one asks to put in others. The only one I at present ask to put in is the article of the 15th May, 1908, an article for which Paranjpe was prosecuted. My Lord, in May and June, 1908, articles were written for which the Plaintiff was prosecuted. The article for which Mr. Tilak was prosecuted were the bomb articles, articles condoning assassination and putting forward the policy of the bomb. I ask, my Lord, to put this in as being a prosecution for an article written about the same time and as bringing Paranjpe and this gentleman together in relation to prosecution for this very article at the very moment he himself is arrested, and I submit to your Lordship under these circumstances there is no way in which the Jury can determine the meaning of the justification for what we said in the book.

Mr. Justice DARLING: Let me quite understand the facts. This article from the "Kal" which you are now asking to read is the very article, is it not for which Paranjpe was prosecuted, and prosecuted on the occasion when it was admitted by Tilak that he was present with Pranjpe assisting him in his defence.

Sir EDWARD CARSON: Yes, so I understood, my Lord.

Sir JOHN SIMON: He was finding him a barrister.

Mr. Justice DARLING: It is more than finding a barrister.

Sir EDWARD CARSON: Yes, my Lord, it is a great deal more than that.

Mr. Justice DARLING: Yes.

Sir EDWARD CARSON: It is page 105 at Question 520. It begins: "'As regards the 'Kal,' who owned the 'Kal'?—A man named Paranjpe. Q. Does he spell his name P-a-r-a-n-j-pe?—Yes. Q. Was he a pupil of yours?—He was in the school. Q. Did you teach him?—I taught the class where he was. Q. Did you teach him? Just give me a plain answer, please?—Yes, I taught the class in which he was. I did not specifically teach him anything. Q. When you were arrested was Paranjpe living with you?—If living means occupying the adjoining room in the hotel, he was. We both put up in a hotel in Bombay. Q. At that time was Paranjpe himself out on bail on a charge of sedition?—I do not think he was on bail. Q. Just think now. Had not he been charged with sedition?—Yes. Q. And was not he actually in the room when you were arrested for a charge of sedition?—At the time I was arrested he was in my room and he occupied the adjoining room in the hotel. Q. Were you helping him to prepare his defence in the case for sedition for which he was charged?—I was partly helping him. Q. What do you mean by partly helping him? You mean he had other helpers?—There were several friends of his, and I was one of them. (Mr. Justice Darling): Was he charged with sedition? (Sir Edward Carson): I have the record here, my Lord. Was he also convicted?—Yes, he was convicted. Q. Before or after you?—Before me. Q. How long before?—It may be about a fortnight Q. For the same kind of articles that you had been writing?—It was coming under the general head of sedition according to the Court. Q. With regard to the same bomb outrage?—I have not read those articles, so I cannot say. Q. Had you no curiosity about the man whose defence you were helping to get up?—I was finding out the register and finding out about lending him money, that was the help we rendered. We did not read the articles. Q. Is that the way you were helping him?—Yes. Q. Were you helping him to prepare a defence to articles, no matter how wicked the

articles might be, were you helping him without having read them?—I was not reading them. Q. Did you care whether they incited to outrage by bomb or not?—Every man is entitled to prepare his defence and every friend of his is entitled to help him. Q. Did you care whether he had incited to outrage by bomb or not? Did you concern yourself with whether he had incited?—We did not concern ourselves with that." Then he was asked whether it would make any difference to his friendship, and he said none. Then I asked him a little lower down: "Did you ever read an account of his trial?—No, I was not present at his trial. Q. That is not what I am asking. Did you ever read about his trial?—I read about his trial in the papers, but did not read the whole proceedings. Q. What did you read?—I read what was going on, that he was examined on such and such a day, and so on. Q. Do you tell the Jury that reading that you did not make inquiry into what it was was the substance of his crime? Do you ask the Jury to believe that?—Yes, I thought that the articles on which he was prosecuted were rather strong articles, but that he ever approved of the murders I never thought. Q. They were rather strong, you thought?—Yes. Q. In what respect—In expressing his thoughts. Q. What about?—About the whole affair, making the bombs and other matters in the articles. Q. And how to make them?—I do not think he stated how to make them. Q. How do you know? You have not read the article? —That is my opinion. I have not read the article. I am stating it from my information." I think that is all that refers to it, my Lord. Then there was a passage put from one of the articles at page 107. Then I go on and cross-examine him about his subsequent relations at Nasik. My Lord, just to get the dates right, this article was three days after the articles on which Mr. Tilak was convicted. One of the articles with regard to which he was prosecuted was the 12th May. This article is the 15th May. My friend has ascertained that I was right in saying that it was the article on which he was convicted. I submit to your Lordship that we are entitled to read this article, and that there is no other way in which we can dispose of this part of the

libel.

Mr. Justice DARLING: I think the proposal of Sir Edward Carson to read this article and the objection of Sir John Simon raise a very serious and very difficult question. I must form my own opinion about it, and unless I feel that evidence is strictly admissible, my practice is to exclude it, because if a Judge lets in evidence which ultimately is open to objection the effect is that the whole of the proceedings become futile, and therefore if I err at all I try and err on the side of caution.

This question arises in this way. In Sir Valentine Chirol's book, in one of the passages which is picked out and alleged by the the Plaintiff to be a libel on him there occur these words: "In reply to the magistrate who asked him why he committed the murder, Kanhere said: 'I read of many instances of oppression in the "Kesari," the "Rashtramat" and the "Kal" and other newspapers'." He said that to show how it was he came to murder Mr. Jackson. He said that Mr. Jackson had never done him any harm whatever. Now with regard to the "Kesari" it is perfectly plain. The "Kesari" is the Plaintiff's own paper. The "Rashtramat" was a paper which he helped to found and which went on publishing articles, he having started it. Once you start a stone from the top of a hill it goes to the bottom. The "Rashtramat" went on publishing articles, but as to the "Kal" that is in a different position. The "Kal" was owned and was conducted by Paranjpe, who undoubtedly was a friend of the Plaintiff. Undoubtedly at the time when Mr. Jackson was murdered these two papers had published articles which were of the same order, which was the worst kind of order. They must have been of the same order, because within a few days of one another Tilak and Paranjpe were both prosecuted for sedition, and they both of them were convicted. Tilak was prosecuted for publishing an article, amongst other articles, about the preparation of bombs and the use to be made of them, and Paranjpe was prosecuted for an article which we know must have been to the same effect dealing with bombs and how to make them. We know that from the evidence given by Mr. Tilak himself

at pages 106 and 107 of the proceedings in the case. Now if I turn to the innuendo to which Sir Edward Carson called attention, the innuendo says what the Defendant means is: "That Kanhere in committing the murder of Mr. Jackson had been urged and induced to commit the crime by the matter contained in the newspaper named." The innuendo only says he meant that the said three newspapers were owned by or under the control of the Plaintiff. If the innuendo had gone on to say that it meant to say what is something equivalent to what is meant on page 52 of the Defendant's book about "the lesser papers obeying Tilak's inspiration"—if the innuendo had said that, or that the Plaintiff had himself put that interpretation upon what the Defendant wrote, I should have admitted this proposal of Sir Edward Carson to read from the "Kal" of the 15th May, 1908, but he does not say that, and after this objection and my ruling it will not be open to the Plaintiff to go into any other than what he himself printed here, because he has now taken the objection that the Defendant must be limited to newspapers which were owned by or under the control of the Plaintiff. As I say, I have great doubt upon this. It is possible I may be doing an injustice to the Defendant by preventing him from reading to the Jury further evidence of what kind of things were being published, not by the Plaintiff but by his very intimate friends, or by a friend so intimate that he lived in the same building with him and concerned himself immediately with helping him in his defence when he was having to defend himself upon a similar charge. I have to look at the matter very strictly, and I have come to the conclusion that if I were to admit this I should be admitting what is not strictly evidence, and that it might imperil any verdict you give, and, therefore, I exclude it. Of course, if I am wrong the Defendants have a right to a new trial.

Sir EDWARD CARSON: My Lord, the next matter is this. I do not know whether my friend objects to it, but I propose now to read the confessions of Dandekar and Ambdekar.

Sir JOHN SIMON: Will you show me where they are? I do not think this matter will take very long to

argue at all, but I should submit that the objection which I took, I remember, at an earlier stage when my friend was going to read it, and postponed the question, is perfectly sound, that this is not evidence against Mr. Tilak.

Mr. Justice DARLING: What is it you ask to be allowed to read, Sir Edward?

Sir EDWARD CARSON: I only asked whether my friend objected.

Sir JOHN SIMON: I am afraid I must.

Sir EDWARD CARSON: It is at page 53 of "Indian Unrest." I will show your Lordship where the libel arises; this is one of the matters complained of in the book: "He must have had a considerable command of funds for the purposes of his progaganda, and though he doubtless had not a few willing and generous supporters, many subscribed from fear of the lash which he knew how to apply through the Press to the tepid and the recalcitrant, just as his gymnastic societies sometimes resolved themselves into juvenile bands of dacoits to swell the coffers of Swaraj." My Lord, I am proposing to give in evidence that these two gentlemen were convicted, and at their trials they made confessions—I am not going to mention now what they said. It is in justification of that last line. There has been a good deal of evidence read this morning about this. Just to call your Lordship's mind to what was proved about these gentlemen this morning, at page 96 of the evidence of Ganesh Vaidya, and he says here: "I knew at that time in Nasik a man called Shanker Ramchandra Soman. I had dealings with Soman in connection with this society. Q. What did Soman do?—I have stated in my statement; I don't now remember what it is. I think Soman gave me an oath. The oath was that a secret society had been established and what efforts were to be made. Q. Efforts of what?—For getting Swaraj. I and other members of the society did something to get the Swarajya. We collected some materials for making bombs. At that time I didn't know Ganesh D. Savarkar. Q. When did you come to know him?—I never knew him. I knew Dandekar." That is one of these gentlemen that I am dealing with now:

"He was an accused in the case in which I gave evidence. Before my case I received a gold neck ornament. I converted it into money. I sold it through my brother, and got money. I gave some money to Dandekar and some was spent for this purpose. For purchasing materials, pistol and other things. I knew Ragunath Chintaman Ambdekar. He was an accused in the case I gave evidence. I got something from him. Q. What did you receive from him?— I received from him a pair of gold wristlets. As stated above, I gave them to my brother, and they were sold. My brother's name is Shanker Balvant Vaidya. I got to know Ambdekar through Soman. The moneys were used for purchasing marerials. Some moneys were given to Soman and his friend to purchase materials. Some moneys were used by me for going to different places. I also got another necklet from Dandekar. I made similar use of this necklet." My friend Sir John wishes me to read this: "The Society at Nasik was not the same as the Mitra Mela Society. I did not know the Mitra Mela Society. Q. As a matter of fact, Mr. Tilak knew nothing of your society?—He did not." "Mr. Tilak had nothing whatever to do with anything, including the journeys, the interviews and purchases of materials &c. I was 17 years old in 1909."

Sir JOHN SIMON: It is the year I want. It is all in 1909.

Sir EDWARD CARSON: Then, my Lord, at page 115, a gentleman of the name of Gopal Trimbak Gole, who lives at Nasik, talks of the same man, Ragunath Ambdekar, nine years before. "While he was living in my house a theft was committed of a pair of gold bracelets." It is really tracing the theft. Then on the next page, Ganesh Joshi says Dandekar was living in the same house with him at Nasik in 1909. "Myself, my sister, and one tenant were living together. Dandekar had gone to Poona for sometime. When he went to Poona I went there, too. There was a tenant in the house of Dandekar, and a theft had been committed in his room. Dandekar was suspected, and so I went to Poona. The tenant sent a man in advance of me, and then he asked me to go. Dandekar's mother was at Nasik then." Then

he says a gold necklet is stolen. Then at page 118 they trace it further into the possession of somebody else.

Mr. Justice DARLING: It was broken up, melted, and made into money for buying pistols and things; there is no doubt about that.

Sir EDWARD CARSON: Then at page 123, it having been traced into the hand of Diveker, he says a man called Shanker Balvant Vaidya, to whom it was traced, was the manager of the Nasik Swadeshi Co-operative Trading Company, Limited. Then on the 13th June he sold some gold ornaments worth Rs. 375. It was a necklace that he sold to him. Your Lordship sees that commences with the statement that the society for which they were to do this was Swaraj, or rather the object was to assist Swaraj. In the libel it is not alleged that this money went to Mr. Tilak. It says: "Just as his gymnastic societies sometimes resolve themselves into juvenile bands of dacoits to swell the coffers of Swaraj." I propose now to show what this gentleman was convicted for, and what he stated himself in the course of the conviction for the purpose of proving that. My Lord it is not a question of Mr. Tilak knowing anything about it. That is the root fallacy, as I submit to your Lordship, in all the arguments produced through the whole of this case. The charge is not, and never has been, against Mr. Tilak that he did any of these things himself. The charge is, and always has been, that it was his teachings and the doctrines he put forward which were calculated to do this, and it is a reasonable inference that it brought it about. My Lord, I submit that it is for the Jury to say in this case, when they have heard the convictions of these dacoits who, according to that evidence, were selling these things for Swaraj, whether it is not a fair statement made by Sir Valentine Chirol in his book, when he says: "His gymnastic societies sometimes resolved themselves into juvenile bands of dacoits to swell the coffers of Swaraj."

Sir JOHN SIMON: My Lord, the objection here can be put very briefly; it can be put in this general form: that if the Defendant chooses to write in his book such a passage as that just referred to, he cannot justify it by producing a record of the confession of anybody

who has ever stolen anything in India. That is the objection. In this particular case it is a particularly far-fetched one. Dacoity, I believe, is the crime of stealing by force where more than five persons are engaged.

Sir EDWARD CARSON: Where is that in the evidence?

Sir JOHN SIMON: I think it appears. This is apparently the case of somebody purloining a necklace. What is more material is that it is an event which happened in 1909, that is to say, nearly two years from the time when Mr. Tilak was comfortably away in Mandalay. What is sought here to justify the libel against Mr. Tilak on this ground is to say: I propose to produce what I do not doubt is an accurate record of what was said by some pair of boys who in the year 1910 were, as I follow, prosecuted for stealing a thing, or being concerned in it, the events having happened in 1909. My Lord, if that were so, it is obvious that any and every confession made by anybody who had ever stolen anything in India at any time, might just as well be put forward for the purpose of justifying this libel on Mr. Tilak. In the present case, Mr. Tilak has given his evidence that he knows nothing about it. The evidence called by my learned friend in India is that Mr. Tilak knew nothing about the conspiracy or society which was apparently concerned in stealing these things, from beginning to end; it all happened a year and a-half after Mr. Tilak had been convicted of sedition and sent to Mandalay, and I submit there cannot be any justification for saying: I want to read to the Jury this record of somebody's confession. You might just as well read any extract from the passages of any newspaper which records the proceedings of any criminal court. There is one further point. I agree that the confession of Chapekar and Kanhere may very well be regarded as the best evidence, because, as we see in the evidence here, those people, are no longer living, having been executed. I am not aware that these people, whoever they are, Dandekar and Ambdeker,. are in that position at all. It would surprise me to learn that boys of 17 and 18 convicted of being concerned in the stealing of a necklace had been executed, but that ground is not necessary for me,

because I submit the other ground is sufficient.

Sir EDWARD CARSON: My Lord, the same argument is put, that I might as well put in a confession of anybody anywhere in the whole world; that is the usual kind of argument; but that is not what I am asking to do here. You cannot turn an argument of this kind into ridicule by an argument of that sort, however frivolously made. The argument is of an entirely different character, namely, that we have said that there were dacoities for the purpose of Swaraj, and we say dacoities committed by his gymnasia, the gymnasia which he started. My Lord, there is no use reiterating over and over again that Mr. Tilak was in gaol at the time. It is common ground in this case.

Mr. Justice DARLING: I may say at once I am not the least impressed with that. I should have thought everybody knew the evil that men do lives after them, and if he had been hanged and buried in the gaol it would not be a sufficient answer to say because of that nothing that he preached can be set down to his discredit. If it were, it would be of no use to read in these Courts the judgments of Judges who were dead; you would say: Well, because they are dead, what they said has perished.

Sir EDWARD CARSON: No, my Lord. None of us would get that necessary patience because Job is dead.

Mr. Justice DARLING: That is the first of judicial qualities.

Sir EDWARD CARSON: My Lord, let me put this as clearly as I can, because it really affects a great deal in this case. My Lord, the issue here is what was the effect—not even what he meant, but what was the effect —of the teaching of Mr. Tilak. It is not necessary for me at this moment to go through the whole of the evidence, but he was teaching above all things Swaraj. Everything was Swaraj, every sacrifice for the sake of your country. It may be a very good thing, and I can imagine myself saying it on a platform, but that is not the point. The question is what was the effect that it is likely to have shortly afterwards at a place which he had paid special attention to in regard to the promotion of Swaraj and Swadeshi, mixing the two up together to the

best of his ability—I am assuming a case now—if you find dacoities committed for the purpose of that. My Lord, is not that evidence in this case of justification of what is referred to? It is not stated that the Swaraj was committed for him, it is not stated that the dacoity was committed for him. It is not said he had anything to do with it, but we state as a matter of fact it has arisen out of your teachings whether you meant it or not, your teachings of Swaraj and the vow, and the terrible things that were to happen for the purpose of Swaraj; then we find these crimes committed.

Mr. Justice DARLING: I tell you at once, Sir Edward, I agree with you so far. The only difficulty that I have is as to the manner in which it is open to you to prove that. You want to read the confessions which are not evidence on oath of two people who were thieves. There is evidence already before the Jury, and the Jury will give all proper weight to it, of people that these two boys did steal these things, and did commit dacoities, and that they were members of these societies, and so on; all that is perfectly legitimate. The only place I have a difficulty is when you want to go a little further and put in statements, not evidence on oath, but statements of these convicted thieves.

Sir EDWARD CARSON: Of course, my Lord, I mean to put them in, having put in the record of the trial and convictions. I do not know whether that may alter your Lordship's view.

Mr. Justice DARLING: If it was something that was said in the course of the trial that has been put in, that would be another matter; but all this about the necklaces and so on is the evidence of people who were witnesses on oath, just as much as Mr. Tilak was on oath here. They gave evidence in Poona just as evidence has been given in this Court, and what has been read is the Deposition. That is the only difficulty I have.

Sir EDWARD CARSON: Your Lordship has to rule in the matter, and I have to submit, which I do, but your Lordship will take me not as withdrawing, but as pressing the evidence?

Mr. Justice DARLING: Yes. On this evidence has been given and given without objection, which goes to

this very same point—that the boys who belonged to gymnastic societies did become thieves at an early age, and thief is called dacoit in India; they were juvenile dacoits. But what is asked now is to give a little more evidence to show that two of these thieves—Dandekar and Ambdekar—really were guilty of these crimes which it has been sworn they were guilty of. That evidence is their own confessions. My difficulty is these confessions were not upon oath; they are not evidence as the Depositions were evidence, and I come to the conclusion, I must say with regret, because I think the more we know of the truth of this case, the better for everybody, that if objected to they cannot be given in evidence. I uphold the objection.

Sir EDWARD CARSON: My Lord, amongst the exhibits there are convictions of a number of people; I do not know how far it is necessary to put them in. It was admitted by Mr. Tilak that Bijapurkar was convicted; I do not know whether my friend makes any point that could only be hearsay.

Sir JOHN SIMON: If you have it in a proper certificate to show some persons were convicted, and will state it, I do not take any objection at all. If anybody from A to Z was convicted, do not bother about proving it formally.

Sir EDWARD CARSON: There were the three Savarkars, then Prasade, convicted on or about 22nd May 1907, and on the 6th June. My Lord, they are set out in the Particulars.

Sir JOHN SIMON: If my friend, Mr. Hill, has checked them, and is in a position to say there is a formal document, please go on.

Mr. EUSTACE HILLS: There is a formal document.

Sir JOHN SIMON: Then we need not delay.

Sir EDWARD CARSON: We need not delay that further by putting in the formal documents; they are exhibited.

Sir JOHN SIMON: My Lord, there is one thing I have to ask to do before my friend proceeds to address the Jury. You will remember the question was raised earlier as to whether there was anything that we wished

to point to in the Indian Plague Commission's report.

Mr. Justice DARLING: Mr. Tilak said he could show from that Commission that these officers seized people who they knew were not suffering from plague and treated them as though they were. That was the thing he undertook to find.

Sir JOHN SIMON: I am of course, as your Lordship will understand, in no respect answerable for anybody's undertakings, I am only concerned to say that there are passages in the Indian Plague Commission which I indicated really when Lord Sandhurst was in the box.

Sir EDWARD CARSON: You have no right to say that.

Mr. Justice DARLING: You said there are some passages. You were not entitled to say what you read to Lord Sandhurst was in that book.

Sir JOHN SIMON: I did not mean to do that.

Sir EDWARD CARSON: It is indirectly giving in evidence what you cannot give in evidence.

Sir JOHN SIMON: I understood, when I put a question about it which I told Lord Sandhurst I was putting having regard to the fact that there was a Commission, Lord Sandhurst very naturally said he did not recall it.

Mr. Justice DARLING: You put a question and used the form of words, and there is no evidence that that form of words was taken from the report. When I was about your age, Sir John, just called to the Bar, if I took up a document and appeared to be using it in putting a question, Judges in those days used to tell me to put it down.

Sir JOHN SIMON: Be it so, my Lord.

Mr. Justice DARLING: The Judges were stricter in those days: they were not nearly so lenient as I am.

Sir JOHN SIMON: We are under a more merciful dispensation. At the same time I want to do what I can properly. My recollection is your Lorship said you thought it would be better for Mr. Tilak to be brought back. I understood your Lordship that it would be better for Mr. Tilak to be recalled. It was at the middle of page 380 of the Eighth Day, and I was asking Lord Sandhurst who, of course, was head of the Government at the time, about the Indian Plague Commission. Then

at the middle of the page Sir Edward Carson says: "The witness has said he knows nothing about it." Then I say: "I think it is more convenient that the reference which I was asked to find I should not offer to this witness but later." Then your Lordship said: "The Plaintiff said he could find something he thought in the report which justified what he had written. The better way would be to recall the Plaintiff to produce it."

Mr. Justice DARLING: We must understand what it is he is to produce. What he is to produce is this: Something in the report of the Plague Commission which justifies his statement that officers took people who they knew were not suffering from the plague and treated them as though they were. It came very early in the case.

Sir EDWARD CARSON: Yes, my Lord, at page 176, Fourth Day, I ask: "Is it a horrible accusation to make to say that although the plague is abating that the officer charged with this anxious terrible work is, for the sake of having victims, sending men who are not stricken with the plague into the plague camps?—Horrible. If untrue." Then I ask: "And like the demons of old he will carry them to the segregation camp in spite of their protests and wails. Is the demon the British officer?—It is a comparison. Q. Is the demon the British officer?——(Mr. Spence): Like the demons of old. Q. Is the British officer there meant to be represented like the demons of old, as the Hindus understood?—Yes, by comparison." Then your Lordship says: "Listen to me a moment; that passage was read to you, and you were asked if it was horrible, and you said: 'That is horrible if untrue.' Now I ask you, is it untrue, or is it true?—It is true. (Sir Edward Carson): Have you got a single witness here to prove the truth of it?—I have not got any witness, but all these facts have been acknowledged in the Plague Commission's Report. Q. What commission?—The Plague Commission appointed by the Government. Q. They must be referred to here: we cannot have statements of that kind. Have you a single witness here or did you examine a single witness in India to bear out the truth of one single fact that you allege against our soldiers and our officers in these

horrible writings of yours?—It was not in issue at that time, and I was not obliged to give evidence on that. Q. At all events there is no witness?—They were facts admitted in Government's report."

Mr. Justice DARLING: If he is to come back that is what he is to come back for, and nothing else.

Sir JOHN SIMON: I think I can get your Lordship's ruling on this in a form which will not in any way embarrass my friend or involve me in stating anything if your Lordship will just look at the evidence of yesterday and refresh your memory as to some of the questions I put. Your Lordship appreciates the reason I am doing it this way: I do not want, as Counsel, to state things. I want your Lordship to look at what it was. Would your Lordship look at some of the questions I put: 3098, 3099, 3101, 3102, and running on near the bottom of the next page. That gives your Lordship an indication which will enable you to say whether, in the circumstances, I should be justified in asking for Mr. Tilak to come back. If I put it in that way I do not think I am doing anything which is unfair, if your Lordship says no.

Sir EDWARD CARSON: I have an observation to make upon that, my Lord, when your Lordship has read those questions.

Mr. Justice DARLING: 3106 seems to be the strongest of all.

Sir JOHN SIMON: If I may take that as an example, what I should wish to do would be to recall Mr. Tilak in order to ask him a question with reference to the report.

Sir EDWARD CARSON: Whatever the value of that answer is, of course, they have got it, but, my Lord, the specific matter which came in controversy between us was as to what was reported. There may have been for all I know—I am arguing on a hypothesis now—a great deal of evidence and a great deal of different evidence both ways before the Commission that sat—I do not know—but, my Lord, here in this Court we cannot go into the whole of that evidence on the one side and the other. What we are confined to is the report. His statement was that this was admitted in the report.

Mr. Justice DARLING: His words were: "I have

not got any witnesses but all these facts have been acknowledged in the Plague Commission's report." You said to him: "What Commission?" and he said: "The Plague Commission appointed by Government." He says there "All these facts." The facts were these: "The number of persons segregated everyday remains the same. And why? Because the head of the segregation party thinks that it is his duty to send at least three or four scores of people to the segregation camp every day whatever the number of plague cases in the City may be. He must have his victims." Then comes the part about demons.

Sir EDWARD CARSON: That is as to the report. I have put a passage in the report to Mr. Tilak. Your Lordship will remember I read a passage in the report and I asked Mr. Tilak to find any other passage about the conduct of the soldiers. The passage I refer to is at page 325 of the report which said the conduct of the soldiers was reported to have been exemplary. We cannot go behind that report, but that is what he appealed to in the first place. In the second place, if you were to take isolated sentences out of evidence——

Mr. Justice DARLING: I should not let him refer to evidence at all, because, he pledged himself that that was his justification.

Sir JOHN SIMON: My Lord, I think I can shorten this, because the matters to which I was going to call attention, so far as I have observed them, would be in the evidence and not in report. Your Lordship may just as well know that at once.

Mr. Justice DARLING: That would not justify it at all, because, of course, even if you could find every word of it in the evidence, it might have been given by some malicious person.

Sir JOHN SIMON: That may have a bearing on the weight of it. Your Lordship will remember I put the question to Lord Sandhurst as to the standing and position——

Mr. Justice DARLING: I do not know what you are looking at, Sir John.

Sir JOHN SIMON: Would your Lordship kindly look at one other reference which I will give in the same

way; I had rather forgotten it. It was not solely when Lord Sandhurst was in the box; he was succeeded by Sir Richard Lamb, who told your Lordship he was the head of the administration on the second occasion. Would your Lordship in the same way inform your own mind, without my stating it to the Jury, of what is at page 386? His general point was that he was not able himself to answer all the questions precisely; he said he had not experience of the earlier administration but only of the later administration, and therefore could not compare them. At page 386, Question 3160, I ask a question about Major W. L. Reeve, chairman of the Plague Committee Then after that I put a number of questions, and in the same way if your Lordship thought it right to give the Plaintiff the opportunity, it would be on that topic by reference to the evidence that I should seek to get the fact.

Mr. Justice DARLING: It does not go within 100 miles of what he said.

Sir EDWARD CARSON: May I make one observation? My friend has read out a question that he put to Lord Sandhurst, and I understand it was Question 3106 that he relied upon.

Sir JOHN SIMON: I do not rely on it.

Sir EDWARD CARSON: It is the one that was read out: "Would you accept this as what happened at Poona; that in suspicious cases inmates were segregated before the case was declared to be one of plague, and they had to undergo the pangs of segregation for nothing." Lord Sandhurst does not accept that, but even if he did, what has it got to do with the particular question put to the witness. The whole force of the question was that it was to make victims and keep up the numbers, though knowing the men had not the plague.

Mr. Justice DARLING: There is no doubt that was the charge. If there were no people with the plague, or whether there were or were not, they seized 200 to 300 a day and put them into these camps, and it was because they must have victims just as the demons used to have victims.

Sir JOHN SIMON: I understand your Lordship's

ruling about that. I think this is the proper moment for me to make a formal submission which I must do, because the Court of Appeal requires these things to be put in form. The situation now, I am glad to think, is that the evidence is over, and the Defendants here have set up a justification as regards one of the libels, the defence which it is for them to establish that it is a fair and accurate report of judicial proceedings. Now, my Lord, assume that that is an action for defamation, the defence puts up those answers, the whole burden of course is upon them, and if as regards any one of the libels there was no evidence to support the justification, I suppose it would be proper for the Counsel to make that submission before the Defendant addresses the Jury. I do make that submission, my Lord, in this case, that is to say I submit that as the evidence now stands, having been closed, there is no evidence fit to go to the Jury, at any rate on some of these libels—I make the submission in point of form about all, but more particularly about some—to support the suggested justification at all, and consequently I am entitled to claim, as regards some of these libels a judgment for such sum in damages, be it small or large, as the Jury is minded to give. I am anxious to take that point now, lest it should be said hereafter that I did not make the submission. Without enlarging my submission as regards the Cow-Protection Society, which is the first one; the complaint that we make is that we are said to have started the organisation, and started it for the purpose of fermenting riots. The evidence is, in my submission, not evidence which supports that libel at all. There is plenty of evidence about the Anti-Cow-Killing Societies, some of it criticising the societies, but no evidence fit to go to the Jury that Mr. Tilak started the societies for fermenting riots. The evidence—to remind your Lordship in two sentences—is first that there were riots where there were no such societies, and secondly there were societies where there were no riots. I make that submission. The first libel is at the bottom of the first page of the Statement of Claim, and I am taking them in order. The first one, which we call the Cow-Protection Society libel, is: "He started an organisation known as the Anti-Cow-Killing Society,

which was intended and regarded as a direct provocation to the Mohammedans, who, like ourselves, think it is no sacrilege to eat beef."

Mr. Justice DARLING: I was looking for the exact words; you said that it was to promote riots, but it is "Intended and regarded as a direct provocation to the Mohammedans."

Sir JOHN SIMON: The words are: "He started an organisation known as the Anti-Cow-Killing Society, which was intended and regarded as a direct provocation to the Mohammedans."

Mr. Justice DARLING: He might very much provoke them, and yet not cause riots.

Sir JOHN SIMON: I understood from the conduct of defence all the way through on this part of the case the suggestion was it was Mr. Tilak started the organisation which was the cause of the Bombay riots.

Mr. Justice DARLING: I must deal with whether there is evidence to support the justification of the words which they use. It is not a justification of everything that ever Counsel may do in the course of the case. The justification must be of the words there used.

Sir JOHN SIMON: I am anxious to have the submission on record. As regards No. 2, I submit it is quite clear there is no justification here. Your Lordship will, I think, agree with this, that if there is to be a justification, it is a justification which has got to cover the words used; you do not justify it by proving there is something which would support part; you must justify them all. The second one is: "With the help of the brothers Natu who were the organised leaders of Hindu orthodoxy, he carried his propaganda into the schools and colleges." There is not a scrap of evidence, and I ask your Lordship to direct, since the sting is that the brothers Natu were deported for sedition, I am entitled to a verdict on that. "He carried his propaganda into the schools and colleges in the teeth of the Moderate Party." I submit there is no evidence of that. There was evidence about schools—I forget what it was— that they did or did not do something or other, and tear up some books, but what is necessary is

that it should be Mr. Tilak, who carried the propaganda into the schools for that purpose. In the next place: "he proceeded to organise gymnastic societies in which physical training and the use of more or less primitive weapons were taught in order to develop the martial instincts of the rising generation." The sting of that is it is suggested that this was a way of in effect creating a physical force which would be used for improper purposes.

Mr. Justice DARLING: I have only got to deal with the words. It is for the Jury to say what they mean. All I can say is, that as I read this I could not withdraw it from the Jury.

Sir JOHN SIMON: If your Lordship pleases. As regards the third one, which I call the Blackmail libel, I submit there again there is no evidence whatever to support either the allegation that money was subscribed from fear of the lash—which is nothing more than a picturesque way of saying he was a blackmailer—or secondly: "His gymnastic societies sometimes resolved themselves into juvenile bands of dacoits to swell the coffers of Swaraj." There, I submit, I am entitled to a direction to the Jury to give the Plaintiff such damages as they think right.

Mr. Justice DARLING: There is no evidence of that justification; I could not say that.

Sir JOHN SIMON: If your Lordship pleases. As regards the Tai Maharaj case, that arises on a different point, and all I desire to call attention to is this, that it is clear you cannot defend yourself from publishing an account of legal proceedings in a book—I am not talking about a newspaper—merely by saying, even if it were true, that you had summarised the judgment. As Lord Halsbury pertinently observes, there is no presumption whatever that a Judge's judgment is a fair summary of every case that he tries. The Judge gives his judgment, and, as in many cases, inevitably forms quite rightly a view. I will refer your Lordship to the case of Mac Dougall v. Knight, in the House of Lords, 14 Appeal Cases, where Lord Halsbury lays down at page 200: "If a learned Judge's judgment or summing-up to a jury did not, in fact, give reasonable

opportunities to the reader to form his own judgment as to what conclusion should be drawn from the evidence given, I think the publication of such partial, and in that respect, inaccurate, representations of the evidence might be the subject of an action for libel to which the supposed privilege in what was said by a judge would be no answer.

Mr. Justice DARLING: Clearly a judge in giving judgment might say many things against a person and yet come to the conclusion that he had to give judgment in his favour, and of course, it would never do to let anybody take up all the things the judge said against him and then not say that at the end the judge gave judgment in his favour, that would not be a fair report.

Sir JOHN SIMON: "There is no presumption"—the point of this is that the burden is upon my friend—"there is no presumption one way or the other as to whether a Judge's judgment does or does not give such a complete and substantially accurate account of the matters upon which he is adjudicating as to bring it within the privilege. If it be so, it must be proved to be so by evidence"—the burden of that proof is on the Defendant —"and certainly not inferred as a presumption of law."

Mr. Justice DARLING: It comes to this, there is no presumption that the Judgment of the Privy Council was right either and gave a fair account of the matter.

Sir JOHN SIMON: I do not quite follow what your Lordship has put to me.

Mr. Justice DARLING: Do not you know the Privy Council reversed what Mr. Justice Chandavarkar had done. You say there is no presumption that Mr. Justice Chandavarkar in giving his Judgment gave a proper statement of the facts and evidence. It may be. But the same rule applies to the Judgment of the Privy Council.

Sir JOHN SIMON: I do not, with great respect, think that that observation has any bearing on the point I am submitting.

Mr. Justice DARLING: I should not wonder a bit if you heard it again.

Sir JOHN SIMON: I rather anticipate it; your Lordship does not often forget anything, but I shall still, with very great respect, though I shall not have

the same opportunity as at that moment of expressing it, entertain the opinion that it has nothing to do with the point I am putting, which is, that there is a recognised defence to what otherwise would be defamatory, if you prove that what is defamatory is a fair and accurate report of judicial proceedings. What has here been done is to boil down and summarise in the book not any report of Judicial proceedings whatever but the Judgment of a Judge. That is exactly the point Lord Halsbury is upon when he says: you do not make your case that you have got a fair and accurate report of judicial proceedings by showing that you have boiled down the Judgment of the Judge, even if you have boiled it down fairly because he says what is necessary to be proved is, that you give the reader a fair view of what happened at the trial.

Mr. Justice DARLING: There is some evidence of what happened at the trial. There is the evidence of Mr. Tilak himself, who has been examined and cross-examined about it.

Sir JOHN SIMON: As long as the submission is on the record I am quite content. I submit on that ground, as well as the other, there is no justification there. As regards the remaining paragraphs, your Lordship rather indicated the matter should go to the Jury. I wish to make the submission that there is really no proper evidence fit for the Jury to consider, much less pronounce upon as to the connection sought to be traced in libels 5 and 6.

Sir EDWARD CARSON: I do not know whether your Lordship wants to hear me.

Mr. Justice DARLING: No, Sir Edward. I think in this case there is evidence in support of the justification to such an extent that I should not be justified in withdrawing the case from the Jury upon any one of these allegations and directing the Jury—because that is what it comes to—as a matter of law that they are bound to find a verdict for the Plaintiff. I do not think so, therefore I do not take the responsibility of saying that. I think in each of these libels there is a case for the Jury to consider whether the thing is a libel and also to consider whether the defences pleaded have been

made out.

(Adjourned for a short time.)

Sir EDWARD CARSON: May it please your Lordship, Gentlemen of the Jury, we are now approaching what we generally see described in the Press as the closing scenes of this trial, and I daresay there is nobody in Court who will be sorry when we come to the end. I know that Juries very often think that we unduly prolong these investigations, but I am sure that my friend will join with me in saying that the case is an extremely important one, and I am sure he will join me also in saying that we are both grateful to you for the patience with which you have listened to what must have been a very trying ordeal to be going through all these complicated documents and events, and I myself would very gladly abstain from inflicting another statement upon you, having spoken so recently, were it not that I think the very complication of the case requires that I should, as far as in my power lies, try and make as clear as I can upon the whole case as it now stands at present before you, what the issues between the parties are and how I present the case of my client, Sir Valentine Chirol, to you.

Now, Gentlemen, there are two matters that I should like to clear away, one is the alleged libel as regards the Tai Maharaj case, and I take that as the first in order, because I agree, if I have never agreed before with Sir John Simon in the course of the case——

Sir JOHN SIMON: We have often agreed.

Sir EDWARD CARSON: I agree with him that that is a matter introduced into the book which is something distinct from the other many allegations that are made and about which I shall have to say a good deal. The Tai Maharaj case is not a case affecting the question of Mr. Tilak's career as a journalist and a public man towards the British Government, nor is it one of the matters which can be relied upon as in any wise leading to any of the disastrous results which we say followed from the long-continued course of anti-British teaching which is to be found in his writings and in his speeches.

Gentlemen, we have now the whole of the facts, I think, as regards the Tai Maharaj case, and I would like

to state it first. I do not know why, I am sure, but undoubtedly the Plaintiff has attached a great deal of importance to the record of it in this book of Sir Valentine Chirol's, and, of course, if he attaches importance to it, we have a right to deal with it. But we now know exactly what the history of the article is. We know that when he came back from India Sir Valentine Chirol sent certain articles, as a result of his mission, if I may call it such, to India, to "The Times" and we know that in "The Times," a point was made of it by Sir John Simon when he was cross-examining Sir Valentine Chirol, that the words which are put in in the book which are different from those that were in "The Times" article are these: "As recent developments have shown quite prematurely." You remember leaving out those words that what had been said in "The Times" of which no complaint could be made, although I will refer to one suggestion of Sir John Simon's in a moment—what it stated was that: "For three or four years the Tai Maharaj case, in which, as executor of one of his friends, Shri Baba Maharaj, a Sirdar of Poona, Tilak was attacked by the widow and indicted on charges of forgery, perjury, and curruption, absorbed a great deal of his time, but, after long and wearisome proceedings, the earlier stages of the case ended in a judgment in his favour which was greeted as another triumph for him, and not unnaturally, though, as recent developments have shown, quite prematurely, won him much sympathy, even amongst those who were politically opposed to him." I do not suppose if the article had remained as it was, there would have been anything said in objection to it. But what they say is that he put in the words "as recent developments have shown quite prematurely," and then you remember, as occurs very often, there comes the Judgment at page 340 of Mr. Justice Chandavarkar which, of course, gives a different colour to the whole matter. Gentlemen, we have now the dates; they were proved yesterday by Sir Valentine Chirol. The article in "The Times," appeared in July, 1910, at which time Mr. Tilak had been, as the article says, "sentenced," but on the 20th October—we produced yesterday a copy of "The Times"—there

appeared, the article in "The Times," with which he was at that time connected, giving a statement of Mr. Justice Chandavarkar's Judgment in the Court of Appeal. The consequence was that he made this alteration in the original article, and, indeed, as regards the article of June it would have been quite erroneous to reproduce it in his book having regard to Mr. Justice Chandavarkar's Judgment. Well, Gentlemen, the Judgment is there. My learned friend made an appeal to his Lordship a few moments ago on a point of law as regards which I will not trouble to suggest that he was not entitled to have the case submitted to you, but his Lordship has ruled that it is for you to say whether it is a correct report of Mr. Justice Chandavarkar's Judgment, because the law is that no one can be held liable for reproducing proceedings in a court of law, that is assuming that he does it with accuracy, and that he does so fairly and properly. We have pleaded here that this is merely a report of his Judgment. I will say a word about the comment a few lines on in a few moments, but I will take the Judgment itself for the moment. Gentlmen, from the beginning to end of this case, and they have now had an inquiry in India and an inquiry here—no single fact or statement in the Judgment of Mr. Justice Chandavarkar in India has been questioned. Of course, I admit at once that if Sir John Simon or Mr. Tilak were able to show any inaccuracy in the report of his Judgment which was unfavourable to Mr. Tilak, it would be a matter which I might have to meet by some other plea, or perhaps not meet at all, if I could not, but this case has gone on now for four years, and it has never been suggested down to the present moment by any single question or by any document put in, that the Judgment of Mr. Justice Chandavarkar has not been accurately represented in the summary of it that is contained in Sir Valentine Chirol's book. On the other hand we have put in the whole Judgment of Mr. Justice Chandavarkar and of the judge who helped him to try the case. I have read paragraphs out of those which support in every line and in every incident the Judgment of Mr. Justice Chandavarkar, and I say the matter stands here now absolutely

uncontradicted in this case, that there is not a particle of a suggestion which can be made—I do not know whether it is made, but it has not been made at present—that the Judgment of Mr. Justice Chandavarkar is not an accurate, correct and faithful report of the trial over which he presided, and of the conclusions which he drew at that trial, and if that is so, so far as that Judgment is concerned, it is an end of the matter, and there is nothing more to be said on the question, and in that way, subject to what my Lord will say, I, at all events, wish to cut it out of the case.

Gentlemen, that is not the whole of the matter as regards the Tai Maharaj alleged libel, because, of course, I am aware that there is a comment upon it at page 340: "Mr. Justice Chandavarkar is an Hindu judge of the highest reputation, and the effect of this Judgment is extremely damaging to Tilak's private reputation as a man of honour, or even of common honesty." Gentlemen, you will have to find whether that is a fair comment on the Judgment. That is the only issue, so far as I know, which can go to you on that question, and, as regards that, the only thing you have to ask yourselves is this: In the facts stated that "they had two men of influence, learned in the law, taking her to an out-of-the-way place ostensibly for the selection of a boy, and then, as it were, hustling her there by representing that everything was within their discretion, and thereby forcing her to adopt their nominee. In these circumstances they came to the conclusion that the adoption was not valid, because it was brought about by means of undue influence exercised over Tai Maharaj by both Tilak and Khaparde. Mr. Justice Chandavarkar is a Hindu Judge of the highest reputation, and the effect of this Judgment is extremely damaging to Tilak's private reputation as a man of honour, or even of common honesty."

Gentlemen, I do not think I need labour that. Certainly if it was a case in this country—if you had before you a gentleman, a lawyer and a professor, and a learned and influential man such as Mr. Tilak, who had done the same to some Englishwoman, and had been guilty of making use of his great influential position to hustle her into an act which she did not want to do,

taking her to an out-of-the-way place and using undue influence upon her to force her to enter into a bond, I think you would say it was not only damaging to his reputation, but that he was a real blackguard. But it does not even rest there, because this matter came before the Privy Council, and they laid down, and I do not think it could be denied, that this Judgment involved, and that is one of the reasons I suppose that Mr. Tilak is proud that he got rid of it, and I think rightly proud that he got rid of it—that this Judgment laid down that that trial involved as against Mr. Tilak a charge of perjury, forgery and corruption. Gentlemen, the Judgment of the Privy Council adds additional weight to the observations which I am now making to you.

Sir JOHN SIMON: I do not think the Privy Council mentioned either forgery or corruption.

Sir EDWARD CARSON: Perjury and conspiracy.

Mr. Justice DARLING: Forgery came in in the proceedings in another case. You have not forgotten that.

Sir EDWARD CARSON: No, my Lord, I am going to deal with that now. Gentlemen, there is one other point, and one other point only, on this Tai Maharaj case which was made by my learned friend, Sir John Simon. Sir Valentine Chirol, who has not the advantage of being a lawyer like Sir John Simon and myself, and has the great disadvantage of only being a literary journalist, was faced with great acumen of my learnrd friend, for which he is so noted at the Bar, of having used the word "indicted." He said to Sir Valentine: "Come, Sir, was he indicted on charges of forgery, perjury, and corruption?" "Perhaps not technically," I think, were the words that Sir Valentine Chirol used. "But what would you understand by 'indicted'?" I do not know really whether there is such a process as indictment in India at all. Sending up a Bill to a Grand Jury and the Grand Jury finding a Bill, and it's then going before another Jury to find a Bill, is what you call an indictment. But anybody looking at it would see what he means is that there were charges of forgery, perjury and corruption made against him. Gentlemen of the Jury, it is absolutely in the most literal sense true. What happened? I read

it yesterday. It is on page 136 of Volume IV. My friend said he was not indicted. Here is what happened. This is the Order made by the District Judge, not an Administrative Order, but an Order in this case for the rejection of Probate of the Will which they were contesting on behalf of this lady Tai Maharaj, the widow of Shri Baba Maharaj. Here is what he said: "Whereas the Court is of opinion that there is ground for inquiry into the following offences committed by the defendant Bal Gangadhar Tilak committed before this Court and brought to its notice in the course of this case for rejection of the grant of Probate. This Court under the provisions of Section 47 of the Criminal Procedure Act sends the case for inquiry to the nearest magistrate of the first class and orders the accused to give bail." The various offences disclosed in this suit as committed by Tilak are set out in the Appendix. Then follows the Appendix. Here is the charge he orders to be investigated: "The false charge made with intent to injure in that the accused at Poona falsely charged criminal breach of trust with reference to Orders (b) Fabricating false evidence for the purpose of being used in judicial proceedings, false entries, etc., or, alternatively, forgery, that is altering a document in a material part," and so on. Then: "(c) Corruptly using or attempting to use as true and genuine evidence, evidence known to be false or fabricated." Then lastly: "(d) Intentionally giving false evidence in judicial proceedings under the Indian Penal Code." Gentlemen, that is what Sir Valentine Chirol referred to as being indicted for these charges. Gentlemen, do not let me create any false impression about this. Gentlemen, of all these charges Mr. Tilak was eventually convicted. He was eventually convicted on the charge of perjury, and none of the other charges were put forward before the magistrate. It is right to say that as regards Mr. Tilak, and furthermore it is right to say this because I do not want to be unfair to him in the slightest degree, and this is particularly a matter affecting his personal character. In the end all these charges terminated in his favour, but that is what the book says: "Ended in a judgment in his favour which was greeted as another triumph," and every word

and line of this was justified unless you wish to pass, as Sir John Simon did yesterday, the word "indicted," and give it a technical meaning which he and I understand, and he far better than I, as I am prepared to admit as regards indictments, and there is nothing whatever in the point because the charges were set forth to be dealt with by the magistrate and that they were dealt with in Mr. Tilak's favour is admitted in the passage to which I have referred. So it comes back to what I said before, and I wish to be perfectly clear on the subject, the whole matter arises on the introduction of the Judgment of Mr. Justice Chandavarkar, which nobody has said was improperly set out, and which nobody has questioned as being bona fide related in this book, and to comment upon such a Judgment as that would be damaging to the reputation of this gentleman.

Now, Gentlemen, I hope I have made at all events what I have to say on this perfectly clear—that is the charge which is put forward in the letter from the solicitors which originated this case as being the most serious charge of the lot against Mr. Tilak. I say it stands now absolutely shattered as a charge. I say that it is now no longer really, if you understand the facts of it, a question in this case, and I have gone at length into it because it has been the main subject of cross-examination by my learned friend, Sir John Simon. I shall have something to say about his cross-examination in a few moments, but this is the main thing, if you look at his opening statement, and he spent more time on this than he did on any other charge. In his cross-examination he applied himself mainly to this, or to a large extent to this, and in the letter which threatened this action it was put forward as the main charge. I say there is nothing of it left. Of course, his Lordship will explain to you the law (which you will not take from me as regards this), but the whole question is, putting it in two sentences: Was the judgment fairly reported there? Was the comment upon that judgment a fair comment? If you find those two questions in the affirmative, then, Gentlemen, there is nothing whatever in this charge.

Mr. Justice DARLING: Sir Edward, I ought to have mentioned before, perhaps, that when it comes to the

defence of fair comment you have not explained to the Jury how that is a defence. I shall have to tell them, of course, that it must be fair comment on a matter of public interest, and it is for the Judge always to decide whether the matter is one of public interest or importance, and then if he rules it is, then it is for the Jury to say, and not for the Judge, whether the comment is fair, and "fair" means not necessarily comment with which they agree, and not necessarily comment, but comment which in all the circumstances they would hold to be fairly made by a man who would take his own views which are not their views or a judge's views on the matter in question. I interpose now to say that with regard to all these matters. I shall certainly hold that they are matters of public interest and importance, and therefore that the defence of fair comment, if it be made out with regard to them, is a good defence.

Sir EDWARD CARSON: If your Lordship pleases. Now, Gentlemen of the Jury, there is one other matter which is rather incidental, in the very body of it, to which I would like to go. That is, it is said by Mr. Tilak, and suggssted by Sir John Simon, who, of course, only speaks upon his instructions, that the "Times of India" in the year 1899 apologised for a libel either the same or similar to some of those which are averred against Sir Valentine Chirol. Gentlemen, I entirely deny that statement, if it is important. Of course, what "The Times" did in 1899, which was ten years before the murder of Mr. Jackson, and takes no account of all that happened in the meantime as regards Mr. Tilak's career, has really very littte relevance to this case. But even as regards what happened before 1899, I want to submit to you that this apology cannot help the Plaintiff in any way. In the first place let me say that as regards newspapers, which are mercantile adventures with the purpose of making profits—some people think that newspapers are run for the good of the State. You may think so, but as a rule you will find there is something left, they are run for profit and making money out of it. What a newspaper may take upon itself in the nature of litigation of this kind is matter for their own judgment and they may think it is better even, very often, that they should fight

a case or they may think it is better to say it is sorry, as it costs nothing, than to go on and justify it which may cost several thousands of pounds. I believe such things have happened, but be that as it may, what I want to point out to you as regards the matter on which they were questioned in the year 1899, there was no similarity whatsoever between the libel averred in that case and the libel averred in the present case. In the first place, what the "Times of India" had done was not themselves to write anything about Mr. Tilak, but they copied an article from the "Globe"—whether it was the English "Globe" or not I do not know, but it is a paper called the "Globe"—into their Press. When it was challenged they were not prepared to take upon themselves the onus of justifying what the "Globe" had done, but when you look at what the "Globe" had said it is very different from what we have said here, because after commenting upon Sir Stafford Northcote's appointment—which was the real object of the article—as Governor of Bombay, it says this: "Happily Sir Stafford Northcote goes to this important office," &c (Reading to the words "not its organiser"). Gentlemen, we have never said anything of the kind as regards Mr. Tilak, and we do not say it here now. We say nothing of the kind whatever—nothing approaching it. Of course, for the "Times of India" to take upon themselves a justification of that would be a matter of the most serious character, and I think it is well that I should draw your attention to the distinction. What we have said here is that whatever Mr. Tilak's motives or intentions were in what he has written and in the action he has taken and in the societies which he has started and in the objects and doctrines which he has published they were calculated to lead to the results which followed, namely, the murder of Mr. Rand and the murder of Mr. Jackson, but we have never said, and I certainly as his Counsel would like to make that perfectly clear, that I have never suggested during the whole of this trial, and we have never said, that Tilak directed a campaign of murder—nothing of the kind—or that he was the organiser of murder. Our case is, that if he was so he ought to be hanged. A man who organises murder ought not to be in a libel action—he ought to be at the

Old Bailey or whatever corresponds to it in Bombay. But that is not at all our case. Our case is that, however well-meaning you are, and however anxious you are for the prevalence of your own policy, you cannot defend murder, you cannot defend bombs, you cannot defend violence, you cannot defend theories put forward as regards Shivaji, you cannot write against the Government, and if anything happens, you cannot say that these words of yours, however well-meaning you are—I am not imputing any good intentions to Mr. Tilak, do not misconceive me—but whatever your intentions were, if it was the natural consequence of what you wrote, and if it is a natural inference, we say that that is all that Mr. Tilak said. Mr. Tilak is not on his trial here, nor is Sir Valentine Chirol, but what you have to lay down is, has this book gone too far, having regard to what you know, in imputing that his writings were calculated to lead to disastrous results which we know followed in sequence and if so, was Sir Valentine Chirol justified in saying it. Gentlemen, as to this "Times of India" case, I am all the more justified in saying what I have done, because I find at page 48 of the Proceedings in Court the Counsel said: "There have been occasions upon which Mr. Bennett in discharging a public duty has deemed it right to comment in favour of Mr. Tilak's conduct and these comments all occurred at a period of Mr. Tilak's career which culminated in an event, which to some extent must be deemed to justify everything that has been said. Mr. Bennett does not for a moment admit that there was anything improper or unjustifiable in anything then said. Since Mr. Tilak's commitment there has been hardly any reference to the gentlemen in the 'Times of India.' In point of fact, it comes to this: we do not take upon ourselves the burden of proving the exaggerated statements made in the 'Globe' newspaper, but as regards what we did say ourselves with regard to Mr. Tilak which led up to disastrous results, we do not withdraw any of those, but he has since endured this term of imprisonment." That was in 1897, this was written in 1899, and we leave the matter there. That is the whole of that as regards the question of the so-called apology that was made in the case.

Now, Gentlemen, let me come to deal with the case as a whole. All the rest of the case deals with the action of Mr. Tilak as against the British Government or British officers It is a long story, a long story increasing in violence from 1892 down to 1910—17 years. Gentlemen, let me try and help you to keep the matters separate by dividing it into two parts. There were two campaigns. There was the first campaign of Tilak's, which commenced in 1892 and terminated in 1897 by his conviction. There is little or nothing of them from then until 1905, when he enters upon another campaign, and, just like the first, it ended again in imprisonment for sedition, and he was sentenced to six years' transportation. As we know, or as we allege, at all events, there followed in this case, as in the other case, a detestable murder—the murder of Mr. Jackson—at the end of 1909, and may I say, and I think will commend itself to you, that in the two cases you find a great deal that there is in common. That in each of these periods you will find that on every occasion Tilak takes advantage of the difficulties which had arisen in British Government in India at the moment of that difficulty to emphasise his hatred of British rule, and to stir up with all that venom and ability of which he is a master, in each of those cases he stirred it up against the rulers of India. In the first case, he commenced in 1892, and in 1893 riots broke out between the Hindus and the Mussulmans. The first half of this volume, No. 1, is almost exclusively taken up with their riots and their cause. Riots broke out and he took advantage of those riots. You may take any view you like of them, as to whether it was the fault of the Hindus or the fault of the Mussulmans, but he took advantage of those riots where the religious feeling of the people was stirred to the very depths. He took advantage of those riots not only to further promote hostility between Hindus and Mussulmans, just about as wicked a thing as a man could do in India, but he took the opportunity of saying: "You Mussulmans, how is it you are able to assume these insults by the Hindus who at one time were your conquerors and your rulers? It has been the grossly unfair and unjust treatment of the British Government and their officials towards us as compared with what they

are towards you." Gentlemen, I looked last night, and I have marked and will read two or three passages, and you will find that certainly half of this volume—I am not going to read the volume through to you—but half of this volume is taken up with that one thing, and it is the ground of a great deal of eloquence here that we did that, but it is all founded on Mr. Tilak's own assertions which come to this: We Hindus are never the cause of any trouble, it is the Mussulmans, the Mohammedans, that are the cause of it all—through the anti-cow-killing associations—through the music passing the mosque, and all these things so strange to you and to me—that is the cause of it all, and when it arises that tyrannous unjust British Government and its officers always side, for some reason or other which he does not explain, with the Mohammedans, and never with the Hindus, and I say for months and months the first two years of what is disclosed in this case he takes advantage of that to go to a matter which goes to the very heart of these religious races and these people of India, and incites them each against the other; and not only does he do that, but he cites the British Government as tyrannical rulers, and especially, as he said himself, drawing the distinction as against the officers of the Government who had, under the most difficult circumstances, to carry out the arduous responsibilities which are entrusted to them by the home Government. Gentlemen, to pass on from that, in order to see the campaign in all its aspects, you come down then to 1896 and 1897, when he gets another chance, always taking advantage of the misfortunes of the Government. A famine breaks out in 1896 in Poona, a plague breaks out in 1897 with all its horrors and all the desperate remedies which had to be applied and which nobody says they would like. He takes advantage of that for what? Is it to tell them that the British Government were doing their best; is it in a legitimate and moderate way putting forward projects and trying to help out his fellow countrymen? Not at all. There again, just as in the other case, he finds a convenient opportunity when the community is upset to launch forth in these influential papers of his, the "Kesari" and the "Mahratta" a regular campaign of falsehood and

exaggeration against the Government and its officers. Then follows within a week of it all the murder of Mr. Rand, which he then cries over as a terrible outrage, but proceeds after all to point out that there was some justification for it. Then he is sent to gaol, and when he comes out he goes and takes employment under Mr. Giles, the Minister of Instruction, who was here yesterday. Whether you believe that he correctly represents what Mr. Tilak said to him or not you will probably gauge by his own writings, namely, that the English Government should have a shock if anything was to be done. Then you find him quiet, and certainly, so far as I know, not doing anything at all like what he had done—up to the year 1905. Then what arises? It is well to bear this in mind. Then come further Government complications. The partition of Bengal was proposed as an administrative improvement in India. I am not going to say whether it was right or wrong. There were certainly many discussions, and I listened to many of them myself in this country, in both Houses of Parliament, and as an administrative matter for the better administration of Bengal it took a large place, it was proposed to divide it up and put it under different administrations, somewhat as if it was two provinces. It seems to have excited the people there to a state of fury, which you and I can hardly understand, because we cannot understand how mere administration being divided up in that way could be looked upon as a matter of such national importance as they attributed to it. But be that as it may, there is no question it is admitted, everybody knows it, it is a public fact, that there was no question in recent years which added so much to the disturbances of India, for the time being, at all events, as the partition of Bengal. What does Tilak do then? He proceeds to take advantage of the partition of Bengal to renew the most virulent hostile campaign against the Government and its officers, the British slavery the British robbery of the country, the British tyranny, and British acts of violence. You remember the article I read to you; I may have to refer to it again, where he says: "Well done Bengal?" and where he takes them up for the breaches of the law and their opposition to the law which they had put forward

in that province, and eventually when out of this arises the calamitous introduction of the bomb into India and the murder of Mrs. and Miss Kennedy and their servant he takes it up in a manner of which I doubt if you will find a parallel in the writings of any revolutionaries of such education and in such a position as Mr. Tilak was, all the more insidious because of the language that he used, and all the more insidious because of the way he was able to wrap it up.

Gentlemen,. there again that was done because he found the Government in difficulties. May I say, to anybody who is so disposed, it is not only in India but in this country or any other country you will always find Governments in difficulties. I do not suppose anybody who has experience of public life will demur to the fact that there is hardly a time in the history of any country in which ill-disposed persons may not for their own objects if they like take advantage of particular difficulties of the Government to try and create ill-will to further their own political objects. Here again this is exactly what happened to the first campaign. The second campaign terminated in the prosecution of Mr. Tilak, and he got a very serious sentence, six years' imprisonment for stirring up sedition and disaffection—six years' imprisonment for, as we know, preaching the doctrines of political assassination—six years' imprisonment for the cult of the bomb and six years' imprisonment for what the Judge described as a Press which was a curse to the country. So it was. Then after that came the murder of Mr. Jackson. Gentlemen, that is a short review of the whole matter, to which I shall have to go back later.

Gentlemen, may I make this observation once more here. Is there in your experience—I daresay you read these things—we, who are members of the Bar study them because it is the business which we have to learn and for which we are paid—is there in your experience the incident of a man with a history like that coming into a Court of Justice and asking British Jury to assess the value of his character on a libel which says that his writings were calculated to lead to murder? The value of his character! There is not a coin in existence which would be the value of his character. Even supposing we

were not able to satisfy you—as I hope we have been in this case—as to the truth of every word that we have said of him, what is the value of his character? What is the value of his character in a British Court? Are you going to proclaim to people that you can go and do as he has done and preach these doctrines and preach the doctrine of assassination in a manner which has been described by the Judge who tried that case and tell him: You are free to come into Court and ask to have the value of your character assessed? We know something of libel actions in this Court, and we know that they are brought by people who from time to time want to clear their character—commercially very frequently and morally perhaps more frequently still—but those are cases in which men have come because something has been said would be an injury to them, having regard to the honourable careers that they have led in the past and the honourable careers they mean to lead in the future. But the value of the character of Mr. Tilak! Why, Gentlemen of the Jury, what is the character he could have with the people in India. If he had brought the action there the highest character he could have was that he went so far as to bring about all these results with a view to carrying out the policy which he had laid down so early in the course of his career as a public man.

Well, Gentlemen, that is really the outline of the whole case, and I am not sure that I might not have left it there if it had not been for the suggestion of my learned friend Sir John Simon, that there was no evidence in this case. I do not know how much of it he heard, for I do not remember how long he was here, but as he has made the observation, I fear it is necessary for me to go back, and as shortly as I can, draw your attention to some of the evidence that has been put in. I do not want to do it at any great length, but I boldly assert here that from 1892 down to 1897, when Mr. Rand was murdered, Mr. Tilak never ceased showing his hostility to the British Government and the British officers when he resumed again in 1905 down to 1908, when he was again convicted—he took the same course only in a more violent way and in a

more organised way, with his Shivaji and Ganpati and Swadeshi movements, about which I spoke to you on the last day, and continued down to the day when he was sent to gaol.

Now, Gentlemen, just let me call your attention to this, which is as far back as the 3rd July, 1892, to show you the kind of attitude he was taking up as early as that as regards the British Government. He says at page 20 of Volume I: "If a native is killed by a European, and if the case comes before a Jury, you may again, with equal assurance, venture a forecast that it will prove to be a case of mere accident for which nobody in particular is responsible, except perhaps the dead man or the dead woman, himself or herself. Similarly, if a case of corruption or irregularity be tried to be made out against any white-skinned official, a complicated machinery will, of course, be set up. One body will collect evidence and report; then another, with its opinion thereon, will forward it to a higher authority, and so on, and so on. Now if, as is generally the case, any one or two of these intervening bodies decide in favour of the accused of course the Final Court will fully agree in that view and acquit the accused. But if by any mishap the decision of all the subordinate tribunals is against the officer on trial, the supreme authority will in the first place see whether he himself has made any damaging admissions. If he has, as it sometimes happens, then, as far as that part of the case is concerned, that authority is, of course, helpless. But as far as the rest of the case goes, it is simply not proven."

Gentlemen of the Jury, you cannot beat a charge of that kind. It means corruption, corruption, corruption from top to bottom—corruption at the very fount of justice—the hopelessness and impossibility of ever obtaining fair play under the system of Government in India, and really so far as I am concerned as regards Mr. Tilak that illuminating discourse I have no doubt has laid the foundation of a great deal of his actions and his subsequent career with regard to this matter. Then, Gentlemen, I pass on a year and come to the case of the Hindu-Mussulman riots, which is one of the

matters complained of, which Sir John Simon with a good deal of boldness this morning said there was no evidence of. You remember the libel and the bit that was left out. He started an organisation known as the Anti-Cow-Killing Society which was intended as a direct provocation to the Hindus and Mohammedans. Gentlemen, it does not matter very much whether he started the societies, but there is a long campaign here, a long weary thing to go through, in which undoubtedly he is trying to stir up the Mussulmans and the Hindus by giving an account of what the Government are doing in relation to this matter. It is at page 30 in August, 1893: "If the Mussulmans have got puffed up, then in our opinion its main cause lies in the secret encouragement of Government. It is true that Lord Harris, with great concern, advised the leaders of the Hindus and the Mussulmans the other day in the Council Hall to quell this riot; but we are obliged to say that Lord Harris has either no proper knowledge of or that he forgot in the hurry of the moment, the sort of relations subsisting between these men and the rioters. In the Council there is not a single representative of the Bombay Mussulmans, nor is anyone from amongst Mr. Mehta, Mr. Javerilal or Mr. Setalvad required to pacify the Hindus. The Bombay Hindus have got exasperated, not because of their fanaticism or thoughtlessness as have the Mussulmans, but only in self-defence. They waited for a day; the police could not protect them, and so they were compelled to resist the rioters for their own protection. It is quite clearly seen from the whole account that the Hindus did not set the riot on foot in the first instance; and, if Government's aid had arrived in time, it is probable that no Hindu could have dared to fight. If even now Government will give an assurance of protecting the Hindus, and punishing the Mussulmans for the riot they made without any reason, then we think that the Hindus will very willingly turn away from the riot. Europeans always twit the Hindus, saying that it is because of English rule, that the Hindus are being protected from the Mussulmans, as if it is expressly for protecting us from the Mussulmans that God has sent

them over here. But this belief is entirely erroneous; not only that, but it is utterances of this very kind that have been encouraging the Mussulmans for nothing." Then, at page 33 there is a most disgraceful charge: "Some Government officials lose sight of the fact many a time and under the belief that English rule will be benefited only if this feeling of mutual hatred between the Hindus and Mussulmans remains intact, endeavour directly or indirectly to incite the Mussulmans." Then again, passing to page 41, he states against some of the officials of the British Government that they: "forgetting this principle, often give undue encouragement to the Mohammedan people in the belief that the good of the British Government lies only if dissensions arise amongst the people of India; and that very thing is now going on in Bombay. Attempts are being made to prove that it was only on account of the Hindus having held a meeting and collected funds for helping the people of Prabhaspatan, that the Mohammedans became irritated." Now I pass on to page 43, and there again on these riots, the "Kesari" says: "But the account of this very riot, published by Bisan Narayan Dhar, the famous barrister of Lucknow, imputes the whole blame to the thoughtless and insolent Collector"—that, of course, is a Government official. "Mr. Dhar as an impartial spirit admitted that the Hindus were the first to embark on this riot; but he has proved that the whole of this incident took place through the folly of the Collector"—that is the Government official—"of that district. It is quite obvious that if a collector will grant permission to Mussulmans to kill cows anywhere they liked in the very midst of the Hindu localities, and will prosecute and punish anyone objecting to his order, then all the Hindus will thereby get annoyed and will naturally embark upon a riot."

Gentlemen, what is the use of saying there is no evidence of his stirring up this feeling? Anything written by Sir Valentine Chirol, if I may say so in his presence, is poor stuff in comparison with this: "It is quite obvious that if a collector will grant permission to Mussulmans to kill cows anywhere they liked in the very

midst of Hindu localities and will prosecute and punish anyone objecting to his order"—it is all a long run of criticism to show the utter falseness, hypocrisy, corruption and inability to govern justly, of the British Government. If you are to take it according to the "Kesari," there is no reason why the Englishman should be anywhere when he goes out to any of these possessions or any of these colonies. I pass on many pages till I come to page 94, where again he says this: "Sir Charles Crosthwaite appears to covet notoriety for being a thorough-going ruler. Not content with abusing the Cow-Protecting Societies publicly, he now hurls a thunderbolt of a resolution against them which is printed in another column. According to it, Government officials are not prohibited from joining any society which is not an unlawful society, but departmental notice will be taken of the conduct of officials who take part in advocating or organising a society which sets one class of community against another class or in propagating the tenets of such a society. This is clearly intended as a hit against the Cow-Protection Societies which have been already damned by Anglo-Indian writers as creating ill-feeling between Hindus and Mohammedans." Then on the next page he says: "We are unable to say this very day how far the account published with regard to it is correct. But if it be correct, then how the white officers instigate the Mohammedans to make a riot can well be seen from the Raver affair." My Lord may bear in mind with reference to the libel about his being the originator of the Cow-Protection Societies. On page 97 there is a passage which I have read more than once in which the Plaintiff, Mr. Tilak, makes a suggestion that all these societies (and this goes in justification) ought to be joined together to gain more force, and then ought to become naturalised as other societies have, and he suggests that in the district of Nagpur the Cow-Protection Societies are "carried on very systematically. That being so, if all these Sabhas were brought together and one general Sabha were established for the whole country, the people of different places would become acquainted with one another and also would receive more encouragement to do

the work." What becomes of the contention of my friend as regards that particular libel?

Now, I pass a number of passages till I come to page 108 in 1894, where they are again going into the question of riots between the Mohammedans and the Hindus: "It is a painful duty to charge these officers"—that is the officers of the Government—"with directly or indirectly encouraging racial differences, and thus unwittingly becoming the cause of so many deaths reported this week, but in the interests of good government and of the pubic we must frankly state the truth." That is, the English officers directly encouraged or indirectly encouraged racial differences and brought about many deaths of innocent people. That was the case of the desecration of the Mosque at Yeola. I questioned him about this, and I asked him: "Did the Hindus throw dead pigs into the mosques of the Mohammedans?—That is the allegation made. Q. Did they do it?—As a matter of fact, I know nothing about it." When he is making these charges here he does it simply because he wants to do it, and he gets any peg to hang a tale upon. Then I pass to page 117, where, dealing with this matter again, he says this: "But it must be borne in mind that if the Government, forgetting or leaving aside justice, tries to manage, merely depending upon suavity or on the strength of the Police or the Army, then the principles on which the foundation of the English Rule is laid will very soon be on their way to destruction. It does not appear, from the present resolution at least, that the Bombay Government has disposed of the Yeola affair in the above manner. But we do not know if there has been any change in the mind of the Government owing to the occurrence of the last week. In our opinion the whole blame for the occurrence of the riot lies on the officers of Yeola."—poor officers—"Owing to the present course of conduct only what happens is that the Mohamedans are being spoilt by the secret encouragement of the officers, and the officers by the secret encouragement of the Government." That is the Government give the tip how to be down on the Hindus and crack up these dreadful Mussulmans, and that is the point of policy which we encouraged from the heads of

the Government. I pass on to page 130, where it gives an account of the same riot at Yeola, and it says this: "When we are overwhelmed by disappointment it will be quite necessary for us to ask for redress finally from Her Majesty the Queen in the above manner. The riot took place, temples were burnt, musjids were broken and murders took place, and yet the original causes of the riot have not at all been determined, and the magistrates in the town, without any ground, are sending to gaol, even in large groups, on the stregth of the evidence of the opposite party, which is not worth even a piece of straw." That is, because people are opposed to him their evidence ought not to be believed for one moment, and the Government are partisans of the matter in the wholesale seizing of these people and sending them to gaol; that evidence is not worth even a piece of straw. You will find another sample on page 162, we are dealing again with the officers, they say: "They not only actively sympathised with the Mohammedans, but it is suspected that they directly and indirectly have set them against the Hindus. Whatever the fact may be, it is clear that an impression has been created among the Mohammedan community that the sympathies of the rulers of the country are on their side. Such an impression is enough to rouse all the passions incident to a stern religious fanaticism for which the Mohammedans are historically and proverbially famous. This is the real cause of the frequency of the riots in recent years, and it is the obvious interest of Government to omit all mention of it in a State dispatch, which is only intended to satisfy distant officials."

Gentlemen; the meaning of that is very plain, this is all done to arouse religious fanaticism. He says that comes from the impression caused to the people, and all the time that he is professing to deprecate that he, himself, is writing it up, day after day, week after week, in this journal, for the purpose of bringing about the very result of which he complains. We often have it in a modified form in this country; some paper writes up something and tries to create a good deal of panic about it, and then complains that the panic exists. That is the sort of thing, exactly, he was doing here. Now I pass on to page 198, where he complains of a memorial to the

Government, which these Mohammedans were compelled to issue on account of the way they were being attacked, and on that he says this: "The spirit which the Memorialists now exhibit must therefore be traced to a foreign source and we have indicated above what this source can be. The attitude of the Government officers towards the Mohammedan have compelled the Hindus to dissociate with their Mussulman brethren and Government would be extremely ill-advised if it does not show its strong displeasure of the attitude now taken by the memorialists. We know that there are officers of Government who, if they do not wish for, do not at least disapprove of such exhibitions of race animosities; but we believe that the Government would not be led away by the opinion of such officers. It has already erred too much, and it cannot afford to err further. The Hindus, it is true, are making preparations for celebrating the Ganpati festivals on a larger scale than usual, but it is due to the reaction caused by the folly of the Mohammedans in obstructing the old and national processions in honour of the great Mahratta Sadhus as they passed the insignificant Darga. The Hindus are not going to obstruct anybody in the enjoyment of his just rights either by way of retaliation or by way of aggression. They have festivals of their own on which they can spend their money rather than spend it on the festivals of the community that is determined not to show equal toleration. There is a good deal in the Memorial which is pure nonsense if not worse; and it is a waste of time to attempt its repudiation. These Mohammedans now pretend that their religious susceptibilities are likely to be offended, but they never cared for the religious susceptibilities of their Hindu brethren in obstructing the Palki procession. We should not have ordinarily given publication to such a malicious, false and foolish document; but we do so as it is a good instance of what effect the policy of Government has produced at least on some of the Mohammedans, for we know that the document does not represent the feeling of the majority of the Mussulman inhabitants of the City." Then comes the Memorial of the Mohammedans, and they say: "In proof of what Your Excellency's loyal memorialists have said above, they would humbly solicit

Your Excellency's attention to the overt instigation in the said pamphlets and leaflets"—those were the pamphlets issued by the Hindus—" to prevent by force the slaughter of kine, the disparagement of the Morharram festival, the call to arms, the direct incitement to revolt by a treasonable appeal to the Mahrattas to rebel as Shivaji did under the instigation of his Brahmin priest Ramdas Swami, the seditious avowal in explicit language, that 'the dagger of subjection to foreign rule penetrates the bosoms of all' and the oblique hint that a religious upheaval should be made the 'first step' towards the overthrow of the alien power." That was the case of the Mohammedans themselves which they were compelled to put before the Government in consequence of the campaign which Tilak and the Hindus were carrying on at this time with reference to this matter, and that is the matter upon which Sir John Simon this morning said, there was no particle of evidence that he was stirring up any such feeling as between these parties at all. The first mention, as I come along in chronological order, that I can find of the boycott as one of his weapons, you will find at page 207, and I think it is well that I should read it to you. That is as early as August 1894: "Well, so far we have indicated our miserable and helpless plight, and also indicated the duties of a king to a small extent. Now, after pointing out to our readers the place which appears to us to be a fit one where we can attack and defeat the English in the event of their obstinately pursuing their present unjust and oppressive course of conduct any longer, we conclude this short article. But it is not the case that we are the first to have found out the place at which, if we continue to direct the attack incessantly, we think we might be able to get the English round. That place has been several times pointed out heretofore. Only the people do not yet seem to possess so much courage as is required for making a continuous and determined attack on that place. Therefore, by giving the same sort of encouragement once again, we are repeating the attempt to cause the awakening of courage among the people. It is a fact well known to all people that the English are traders and their whole life depends upon trade alone. All iron articles and things, from little pins

to biggest machinery, all sorts of cloth from the sewing thread for the needle to all sorts of valuable cloth, all the most valuable wooden articles and things beginning with a petty match, which having ousted the pebble of the ancient days can bring down the god of fire on earth in a moment, glass articles, umbrellas and papers, and many other innumerable things—a detailed catalogue of which, if we mean to prepare it, will occupy we cannot estimate how many columns of the 'Kesari'—all such articles and things are to-day coming in from foreign countries. A moment's consideration will show how our whole life is become dependent upon others. If we resolve to-day, that we should not touch foreign goods, we do not know whether we may have to run away from this world. From all these circumstances you can imagine to what extent foreign goods, and especially the English goods, are being sold in our country. What will be the surprising effects if all the foreign goods were, as far as possible, stopped from being sold in our country. First, the cloth merchants of Manchester would be stirringly awakened seeing their own goods lying undisposed of in store-houses, their eyes would be opened, and they would begin to investigate the causes that led to such a state. They would come to know how miserable would be their condition in the event of one country like India refusing to purchase their goods, and then the idea of doing good to the people of India, in whose hands lies their interest to greater or less extent would possibly strike them. Besides, if the people were to resolve not to use foreign goods as far as possible, indigenous goods would be sold, indigenous industries would receive encouragements and thousands of people would derive maintenance therefrom. But why should we purchase indigenous goods? And what impediment is there to purchase any goods we like, following the principle 'The world itself is my family.' 'We shall take such goods as are fine, lasting and cheap. If your Hindus require us to buy such goods, you should try to see that your goods possess these three qualities.' These and many other objections are raised. That people of foreign country should try to ruin us by being bent upon securing their own interest, while we disregarding patriotism should, at the improper time, sit meditating

upon the principle 'the world itself is my family'—there is no other disgraceful act like this." That I read because I think it is the commencement that I find of this boycott which played such a great part afterwards in Tilak's second campaign. I pass on to page 226, where another attack upon the officers is made. It gives you an account of what he describes as the condition of the country in which he was sending out all these virulent articles: "The feeling of animosity between the two principal sections of the population like subtle poison has gradually spread and poisoned not only large and hitherto peaceful cities, but even small villages and towns. This subtle poison like feeling wherever it has penetrated has been producing disastrous results. Villages, towns and cities appear almost to be in a state of civil war. Bloodshed, arson, broken heads and limbs, dislocation of all social and commercial relations and curses heaped on those who are supposed to foment racial animosities for their selfish interests"—that was the English as he had described in his previous articles —"have been too frequent to foster anything like confidence in the truth, justice and mercy of the Government of the Queen. A crusade has been preached against one section of the population by high officials"—that is the high officials of the Government had preached against the Hindus—"who ought to be above petty intrigues and prejudices, nursed by evil councillors whether they be private men, officials or journalists. Under these circumstances how long will the Government of Lord Harris delay laying down a definite and just policy for the guidance of the subordinate executive. Every man has a heart and conscience, and when his Judgment is not warped by prejudice he can discover for himself a just and righteous policy, whenever his position of responsibility as well as necessity demands. Lord Harris has undoubtedly both." Again at page 230, another attack upon the Government: "The readers must be aware already how the police at Yeolá by making false complaints against them, got the Vice-President of the Municipality, pleaders, inamdars and other good and respectable persons committed to the Sessions, and how greatly they troubled them. By the

wisdom of the kind Mr. Unwin, the possibility of zulum i. e., tyranny or oppression, being practised for no reason upon respectable subjects on that occasion was avoided, but there not being at Poona and Vai officers clever enough to be able to secure such good reputation for the Government, great slur is about to be cast upon the Bombay Government and through it upon the rule of Her Majesty the Queen, nay, it may even be said that it has already been cast. Instead of directing their attention to finding out the true cause of the dispute between the Hindus and Mohammedans and trying to remove the same, certain big officers of Government, taking the side of the Mohammedans, have begun to persecute the Hindus, and especially their leaders, that is, for the greater part, the Brahmins." It is the old story, the Government wilfully persecuting the Hindus. You will find at page 238 this: "All pious Christians while pondering over the decision in this case will, we are sure, exclaim in one voice that in this year of grace the British rule in India is worse than the Reign of Terror during the Revolution, the only distinction between the two events is, that in the one case they at once cut off the heads of obnoxious persons and so ended the sufferings of their victims; in the other, the new policy inaugurated kills by inches. Hope, charity, mercy and love have certainly fled the land." I pass a great many matters that I had intended to read, but I think I have already given you, for these years, a considerable amount of matter for reflection. Now I come to February of 1896 on page 374: there are extracts there very well worthy of consideration; "These assaults are becoming frequent and the impression is getting abroad that the Europeans treat natives like dogs." Then there is an extract: "Echoes of the day signed 'Zeburdasta.' Should we not sacrifice for her (Mother India) our bodies and our souls, Aye! Should we not bleed, if need be, for the land that has been bleeding for ages for our sake—her terrible wounds are not yet healed. . . . Our heroic ancestors loved her and died for her." Then there is an appeal to the country: "But alas! my countrymen! where is our unfortunate country, the land of the noble Aryans in the scale of nations! Where are we her countless children?

Alas! We are, poor Ind is where the cruel and destroying hand of Time left her centuries ago—full of the wounds dealt her by foreign tyrants and bleeding to death"—this is a description of the English Government—"and we? We are where our folly took us ages ago—in the depth of base cowardice and misery. We are rolling in the ditch of dependence like so many things. For believe me, gentle readers, we are men no more. The dazzling spark of true manliness has been almost hopelessly extinguished by our wretched cowardice. Oh! for your poor and unfortunate country's sake revive it again with the breath of fresh energy, let it kindle into a flame of enthusiasm and spread like a tremendous conflagration through the length and breadth of our land. That we should have continued to be things so long and should not have been ashamed of such an ignoble existence! Let the noble manliness of the ancient Aryans run through our veins again. Let us be men once more—men determined to work, and if need be, die for the regeneration of their mother country. Old, shaky Egypt has shaken herself, the Grecians have again set up the Altar of Liberty, the romantic Italians are drunk with the sweet nectar of freedom. Their ancestors are shedding tears of joy from the azure heavens and ours are weeping. They have again emblazoned the pages of history by writing in letters of gold 'for freedom and our mother-country.' All these great nations have like spectres from the dead past risen again. Shall old India remain fallen for ever? Not if there yet be left one dying spark of patriotism in even one of her countless sons. The hour has come when we must dash a blow for the honour of India. The hour of trial has come—let it find us all with the motto 'deeds, not words' engraved on our hearts. With the hour of trial let the world see in India the men of action. 'From the least the greatest oft originate' sings the poet. The hour of trial now before the people of India is the least. More terrible hours of trial are yet to come. Let us all face this the least of them all, with exemplary courage so that we may school our throbbing hearts to boldly meet the more terrible ones. In this terrible struggle for existence between Lancashire and India let not our poor country sink. We

can save her—aye! Save her with honour and glory to ourselves. Unite then, ye sons of Ind, unite as one man to face the common enemy of us all—the selfishness of Lancashire. In the name of all that you hold sacred, in the name of all that you love, in the name of the holy memory of your heroic ancestors which you cherish, in the name of beloved India, aye—in the name of England's honour, in the name of the helpless fair rose of Britain that vainly weeps for us in its royal home, resolve to wear the rustic cloth of your country—rustic but not bearing the bloody stains of selfishness. Take oath not to pollute your frames with Lancashire cloth; your beloved country would grow under its terrible weight. And those unfortunate, unpatriotic things that prove unconstant—may their wretched bodies be blistered to the core." Gentlemen, the appeal is an eloquent one, but it is for you to say what you think of that appeal and the effect of it on people like the Hindus, with whom we have been dealing through these passages in the "Kesari" and the "Mahratta." You will find that an opportunity was then arising for an extension of his policy, and for deeds, not words, because that was in 1896, the year in which famine, unfortunately, invaded India, and it was the next year, 1897, that the plague came, and, as I said to you in my opening remarks, the opportunity was taken full advantage of by Mr. Tilak for the purpose of inciting the people to act against the British Government and the British officials, which eventually, as we know, led to his imprisonment, and, as we suggest to you, the murder of Mr. Rand. There is a psssage in February 1897: " the conduct of the English is like that of the harlot, they will say one thing and do quite another, no one should rely upon their words." That brings me down to the plague and the articles connected with Mr. Rand. Mr. Rand was appointed in 1897 in the middle of the plague. May I make a few observations about this? You know, because you have had a description of it, what the devastating effects of this plague were. The first article that deals with Mr. Rand on the 14th February says this: "The municipal returns up to 8 a. m. in the morning of Friday the 12th inst., show that there were 41 local cases and 35 deaths." 35 deaths out

of 41 cases! Gentlemen, Sir John Simon seemed to be putting forward that in some way or other we were saying in this case that the people were satisfied to have these stringent measures for the purpose of exterminating the plague. We have never made such a case here. We have never pretended that segregation camps and the searching of houses were popular things; on the contrary my case is they were very unpopular things, but necessary things. My case is that it was the fact that it was unpopular, as it would be here or anywhere else if it unfortunately had to be adopted to get rid of the the plague. That Mr. Tilak took advantage of. We had people dying, I think it appears somewhere, at the rate of 200 a week or something of that kind—devastating India. I forget how many millions died altogether of the plague—seven millions I am told. It is very easy when there is a plague on to go into your room in Fleet Street or in Poona and abuse the Government for everything they do and to say they ought to have done something else. Never was there a greater responsibility on the part of any Government than there was upon the Government over which Lord Sandhurst presided in Bombay. You saw Lord Sandhurst in the witness box; we thought it right to produce him before you. You saw him and heard his story put forward and his tale of how he went down and stood beside the bedside of those suffering from this disease which might have entered his own house at any time; he went down there when lots of the natives had fled on, I think, two occasions, and went about visiting the fever hospitals. He is one of the men held up here in the "Kesari," and if you had not seen him you might think he was one of those ordinary English tyrants and brutes which were described day by day in that paper, and which emanated solely from the brain of the mild and milk-and-water-like Mr. Tilak. You saw him. He told you his story, he told you of the difficulties, and anybody must see the difficulties; it was the difficulties Mr. Tilak took hold of, it was the difficulties that gave him his chance; it was the difficulties that gave him a splendid text, just as if you had, as I believe we have, a disease raging in this country at the present time, just the same as if somebody

sought to take advantage of that by putting down the whole cause of influenza to the Government—I am not sure there are not some people who do that. But if the people were as ignorant and as easily influenced by papers and some malignant person wanted to raise an outcry against Government, no doubt it would be quite possible to do so. Here was the Government struggling with this desease, struggling to protect the people, calling upon magistrates to go down and risk their lives, calling upon our soldiers to go and whitewash and clear out these insanitary dwellings, and now I am going to show you the treatment they got from Mr. Tilak. And pray recollect, Gentlemen, that you have to keep before you the whole condition of affairs there, and when you know that Mr. Rand was murdered upon the 22nd June, 1897, you will ask yourselves, in the condition of affairs there, was this writing, was this upholding to public opprobrium of Mr. Rand calculated to lead to that result? I am not saying that Mr. Tilak was so wicked as to wish to do it, though I will say this, that if he wanted it done it was a very good way of going about it, just when the people are pulled away from their homes and put into segregation camps, and when they see their relatives dying and many running away from the country, and see all this happening, and all the misery of the plague-stricken districts upon them to hold up the man who is trying to grapple with it as being the cause of it all and the cause of all their miseries, is it any wonder a man should go out and shoot him as the origin of their oppression? Let us see what Mr. Tilak gives in his paper. He cannot even give Mr. Rand a send-off without saying that he is already known to the public on account of the Wai prosecutions, prosecutions which he had to carry out at Wai with reference to some of the Brahmins. The welcome he gives is this to the gentleman who is going to carry this out. On the 16th February, 1897, I find an article in which he says: "Our opinion is that if there be anybody who is committing an act of treason in this matter it is our Government itself." Again he says: "England has come into existence to parade its political power before the people of other nations who are its equals, in order to make them

suffer the miseries of slavery." Then on the 21st February he says this: "Proper relief was not given to some, while undue and special severity was used towards others in exacting from them their dues to Government. And cases are on record of magistrates persecuting and summarily punishing men who were trying to approach these agents of Government, not with weapons, but with humble petitions in their hands. Many may yet be sent to civil gaols and many more will have their lands resumed and sold for not being rich enough to satisfy the extortionate demands of Government—their cruel creditor. The persecutions however, of the representatives of the people have special interest for a judge of the actions of the Government. Their significance is greater, and they are far-reaching in their consequences. To go to the matter straight we say that the prosecutions were intended to be a sort of counteraction to the efforts of the people. Government wanted to terrorise public workers. A plot, therefore, seems to have been entered into in high quarters, to take the scourge of law into the hand and to abuse it for the purpose of punishing these men. At a given signal, as it were, the reign of terror began by arrests and searches under warrants." It does not need comment, it is inciting these people to believe that there is no protection at all from the Government; not only that, but that the Government, for what reason is never suggested, are wilfully trying to tyrannise over the people, take away from them the last shred of liberty and reduce them to a state of slavery. "If the people understood their rights the treasury would suffer. It was the Revenue officers who were then to benefit by standing between the rayat and the public preachers. The three prosecutions must have been directed by very high Revenue authorities and they were evidently intended to intimidate all public workers. If the people understood their rights the power and prestige of the Goverment officers suffer, and naturally, therefore, from the beginning of the famine crusade they are consistently thwarting the well-meaning efforts of the popular leaders in educating the ignorant people. They have used all means for the purpose—inducements, admonition, snubbing, warning,

intimidation, terrorising and chastising. They have stood between the people and their proper advisers, and we have no hesitation in pronouncing these officers the worst enemies of the people." You cannot find anything to hold up people to public opprobrium stronger than that which is written in that one article. Later on, in March, 1897, on page 439, we find this: "The result is that we are being despotically ruled by a plague triumvirate who, however good their intentions may be, sadly lack the knowledge of our social manners and customs which would enable them to make their methods and work acceptable or at any rate least objectionable to the people. The whole machinery works not by sympathy but in an arbitrary manner and houses are searched, property destroyed and people segregated in a mechanical way which naturally alienates the sympathy of the people. For instance, the soldiers know little beyond the simple rule that they have to destroy property in an infected house, and in the beginning there were some cases where they burnt not only the bedding of the patient, but all glass, china, furniture, metal pots and even stone vessels and account books in the room of the patient. This was reported to Mr. Rand, and he was pleased to publish an order directing that nothing but the bedding of the patient was to be destroyed except when otherwise ordered by the medical officer. But even after the publication of this order, cases have occurred where articles like Singer's machines have been burnt by the fumigating of the white washing parties." And on the 4th April they state: "Widows and orphans and even pregnant women are sometimes mercilessly caught hold of and severed from ther friends and neighbours by being removed to the segregation camp. Soldiers, many of whom are rough men, are practically allowed to commit excesses and destroy property to the great confusion and dismay of the house-owners whose protests to the authorities generally go unheeded." Gentlemen, you have heard some evidence as regards these foul charges against the soldiers and the officers, for which there is not a shred of foundation as far as this case is concerned. You heard Lord Sandhurst examined, you heard Sir Richard Lamb examined, and it would be

impossible for these things to have occurred without their knowing of them. No single case of any kind or description was put to them so as to show that there was in existence such a state of facts as that, nor indeed had Mr. Tilak, as I shall show you, a single case; all this was merely the sort of thing he wished to put forward for the purpose of inciting the public. I will pass on now to one of the articles that were used in Mr. Tilak's prosecution, not an article on which he was prosecuted. This is 6th April, 1897, and here is what he says at page 450: "Bless the Bombay Government and its advisers. Well have they blazoned their power. But why should they be backward in exercising zulum in such manner as they like, in broad daylight, under the name of the law or of a resolution? What are you worth that they should not trample you under foot as they like? In the history of the whole world there is not even one instance of the acquisition of political rights by piteous whining and weeping! Even if you passed seventeen thousand resolutions, got an imitation Parliament held, made speeches feelingly, in the yearnings of compassion, still there is as much difference between your Parliament and the English Parliament as there is between a wedding of a toy-bride and bridegroom of girls and a real wedding, or between a native prince of the last century and a native prince of the nineteenth century! What sort of strength do you possess that they should at least give you their bare attention, let alone doing or not doing agreeably to your wishes! But our Government is not of the common sort; it is clever. They will by no means show that they hate you, consider you to be insignificant. They have fully appreciated your worth, perhaps they secretly laugh at your mock-sports even; but they will never betray their feelings. Only the Resolution of Government regarding the Sarvajanik Sabha appears inconsistent with their usually wily conduct. Instances very seldom occur of Government getting angry like ordinary men. They will, as far as they can, keep humouring you; saying, they have been well occupied. The poor on account of of the famine, the poor and the rich on account of the epidemic, and all persons on account of the Government

annoyance feel sad; where is one to go now. Things have come to such a pass. It remains to be seen how many can see the way. Finally: "The call of death cannot be avoided; trying to save the body cannot save. Being thoughtful, you do not understand. What is to be done?" That is two months before the murder of Mr. Rand.

(Adjourned till to-morrow morning at 10.30.)

TENTH DAY.

February 20, 1919.

Sir EDWARD CARSON: May it please your Lordship, Gentlemen of the Jury, at the adjournment last night I was approaching the time of Mr. Rand's murder, which you recollect took place in June, 1897, and the last article I read to you bearing upon the subject was early in the month of April, 1897. I will call your attention to an article in the "Mahratta" of the 18th April, 1897, which is headed: "Racial Misunderstandings and the Reign of Terror. . . . Nothing however is more oppressive than vague terrors which are perhaps never to be realised. The disarmed condition of the people gives a strong impetus to the feeling of security, for with arms the innate confidence in the ability to defend oneself against the lawlessness of others quiets the mind, if it does not soothe it. It is no wonder therefore that danger to property, and especially to life, is felt by all classes of people in the Punjab. The communities seem to be as if they were two hostile armies encamped on the frontier expecting collision at every moment. What is strange in all the affair is that nobody can say what the exact cause of all this misunderstanding may be. Pandit Lekhram's murder, though a most striking demonstration of the hostile feeling between the Hindu and Mohammedan communities, can never in itself be the cause of that feeling. That bold and brutal deed, according to the Punjab papers, was itself the manifestation of a deep-laid plan on the part of some Mohammedan clique." I pass on. Lower down it says this: "We may in concluding remark that even taking things as they are, the Mohammedans are as usual showing themselves to be the aggressors. So long the record of perpetrated offences is clearly against the community and though we may allow that it is only the Badmâshes that are responsible for them, it must be remembered that they are the Mohammedan Badmâshes. The murder of Pandit Lekhram has not driven the Hindus to any wild acts of lawlessness, and the fact proves not only that the Hindus are not aggresssors but that they are so peace-loving, some may say

pusillanimous, as not to be disturbed even by thirst for retaliation or revenge which is very natural under such circumstances of aggression and provocation." Then there comes at page 459 the kind of *shlok* set out with certain principles laid down, which I only draw attention to where he says: "The white Sahib (European officer) of (Ahmed) nagar looked to the happiness of the subject. He was therefore removed and thrown away to a distance." Then it goes through a number of allegations such as: "Houses of people broken open, their goods are burnt, bonfire is made of their clothes and thefts are freely committed. Religious mendicants, Sanyasis"—that is religious people—"women in confinement, pregnant women are forcibly carried as being affected by plague and are thrown at the gates of Yama." That is translated in the margin as the god of death. "Will this plague go away by digging up the houses of the people, whitewashing them, and by provoking the people for nothing?" Then towards the end it says this: "If the King of the Forest, this 'Kesari' gives me a word of encouragement, then by the grace of (God) Rama, I will render small service." In the same number you find another attack upon the Plague Committee: "But it is a matter of extreme regret that in proportion to which the disease is diminishing, the oppression of the Plague Committee is increasing. To carry away entirely wrong persons and detain them in the segregation camp, to enter into the houses of the people in their absence and to damage their goods, to catch hold of old and infirm men and send them to the hospital as plague cases, such and other methods of oppression and injustice are going on even with great vigour than before. And if a complaint is made to the Committee itself, no notice is taken of it by Mr. Rand, the Chairman of the Committee." Just to pause there for a moment on that, what does that mean? Mr. Rand allows all this to go on, without rhyme or reason, simply as a matter of oppression—he allowed all these things to be done and took no notice when it was brought to his observation. "It is an undisputed fact"—he says here—"that oppression is being practised on the people." Then he says: "The reason of all this mismanagement and oppression is, in our opinion, only

this, that the president of the Plague Committee here is not so liberal-minded as that of the Plague Committee at Bombay. It is by no means the case that the Government had issued one order for Bombay and a different one for Poona. Hence, the reason why there is not so much oppression at Bombay, while it is at Poona, lies in the constitution of the Plague Committee here and in the indifference on the part of the officers composing it; it cannot be in anything else." That is, that Mr. Rand is the root cause of all this oppression and of all this scandalous conduct upon the part of officials which he depicts is going on. Then he says: "But as neither of these things was done, oppression commenced from the beginning. No native gentlemen now wish to accompany soldiers, because the former are insulted at every step. For instance, on the one hand we tell the people that the order is for removing only the persons connected with the plague patient to the segregation camp; and on the other, when the segregation party comes, it forcibly carries even the persons living round about to the segregation camp by tying their hands. And it does not listen to what any person who may be near may say. Then what is the use of anyone accompanying the party? Respect there was none and also is none. On the contrary, there would be insult at every step. Under these circumstances no respectable gentleman dares accompany any segregation party, and the soldiers composing it oppress the people just as they like. If Mr. Rand were to go personally with the segregation parties, he would come to know the above things. But we do not think that the above officer possesses so much competency or skill to do Government work, keeping the people pleased. Certainly true it is that the well-known Mr. Crawford was a bribe-taking man." Then they go on practically to say it would be better to go on having a bribe-taking man than keep Mr. Rand there. Then: "Mr. Rand goes out on his rounds in the morning. But certainly very few instances could be found of his having made inquiries on the spot regarding the oppression practised on the people and of his having granted relief to them. And if he cannot do this work, then it will be well if His Excellency the Governor at least transfers him and appoints some more

popular officer in his place." You heard the evidence of Lord Sandhurst as regards Mr. Rand and how he was in daily contact with them and the testimony he paid to Mr. Rand's work. Later on in the "Mahratta," at page 464, there is another attack made on Mr. Rand: "The appointment of Mr. Rand as the chairman of the Poona Plague Committee was an unfortunate choice. He thinks that he has to stamp out the plague, and if that object is achieved by any means, he cares little how much he offends the susceptibilities of the people or what hardships and miseries are inflicted upon the people by his indiscriminate operations." That is, the man does not care about these miseries. "His supreme contempt for the suggestions made to him in a spirit of co-operation, his laconic and curt replies to any queries put to him, his indifferent and very often sullen bearing, and above all, extreme distrust in the work of native agency and native gentlemen, have all made him more than a tyrant at a time when people are suffering from the double scourge of plague and famine. Mr. Rand never believes that his soldiers can do a wrong. He has more confidence in the roughest of them than in a native gentleman of means and position. He gives his instructions to the soldiers, but is unwilling to curb their over-zeal by making an example of any one of them where he is found to be deliberately violating the rules laid down for his guidance. Nominally each division of the searching or the white-washing party is under the control of a military officer, but in practice this officer stands out in the street and soldiers are practically allowed a free hand in searching, white-washing the houses and segregating the healthy. Plague is now much better, and there are decided signs of its abating within a short time. And why? Because the head of the segregating party thinks that it is his duty to send at least three or four scores of people to the segregation camp every day, whatever the number of plague cases in the city may be! He must have his victims."

Now, Gentlemen, that passage of itself is one of the most scandalous passages of these virulent articles against Mr. Rand. It really beats, in its suggestions, anything that any honourable man could have put forward under

the circumstances with which we are dealing—the charge there that Mr. Rand had to carry out these stringent rules, no doubt stringent rules, irritating, if you like, to the people, but when he finds that the plague is abating, for the mere malicious sake of carrying on this oppression—for the very purpose of irritating and making miserable this plague-stricken people—he used them, although there were no real plague-stricken people who required to go to the segregation camp, for the purpose of keeping it up he selected people as victims in order that the number of plague cases might appear the same. It is the most outrageous suggestion that could have been contemplated against any man. All I can say is this, that if any official was guilty of anything like that, that is, of malicious and malignant making use of his office and trying to keep up the importance of his office or trying to keep up a pretence of having to do things by making out victims, he would have been one of the greatest ruffians and scoundrels and villains, and that is how it is meant to depict Mr. Rand there. Do contemplate what the effect of that article is! You have the consolation of the plague abating. At all events, whatever inconvenience you have been put to, it is something that the numbers of cases from day to day are getting less, but that makes no difference to him. You have a scoundrel of the worst type at the top of this matter and he will not be satisfied with the abatement of the plague. His oppression, his violence and his hatred of them is such that whether the plague abates or whether it does not, he must have his list of victims to send to the segregation camps. If a man was murdered under such circumstances as those, that is if that was a true thing, one would say the fault was not the fault of the natives at all but it was the fault of the scoundrel who was misabusing his office.

Gentlemen, the Plaintiff, Mr. Tilak, I cross-examined very closely as regards this matter and he himself admitted to me that it was a horrible accusation if untrue—that was a suggestion that it was true that the officials there found these victims for the sake of keeping up the pretence that the plague was going on there and when I cross-examined him about it he admitted that it was horrible if untrue. Now I asked him: "Is that true or

untrue," and he said: "It is true." He makes the charge here against that dead man that as an official of His Majesty's Government he was prostituting that position in the most terrible and horrible way that could be conceived by anybody—the most scandalous libel upon a dead man that could possibly be brought into the Court and I therefore asked him, as it was my duty to ask him, this. I said: "Show me a particle of evidence there is for this foul libel," and he said: "It is all admitted in the Government report." I said: "Where is the report for I have not seen it," nor had we the report. He has had several days since then, because that was on the 12th February, to point to one line in the report that bears it out. The only paragraph in the report says this: "The objections of the people were apparently increased by the employment of soldiers at house searches. It is not surprising that they should associate the presence of soldiers at the search of a house with a possible use of force, and it is not unnatural that they should have enhanced the dislike entertained by them to the measure, but the actual conduct of the troops, British and native, on the work of searching, did not warrant this attitude on the part of the people. The behaviour of the soldiers in carrying out this disagreeable duty is reported to have been exemplary." Lord Sandhurst says so too, and Sir Richard Lamb says so too. Where is there anybody to bear out, not merely the minor libels upon the leaders, which God knows is bad enough, and these men who volunteered to risk their lives at this plague, but this outrageous statement that victims were made purposely and maliciously for the fun of the thing—made to be driven into the segregation camps. Why, Gentlemen, I say that that one passage is enough to account for Mr. Rand's murder. I am not saying that Mr. Tilak wanted to have Mr. Rand murdered. We have never said anything of the kind, but we say that the doctrines he was preaching—those are the words that are in Sir Valentine Chirol's book—were calculated to lead and incite infuriated and frenzied people, as these were, into conduct of this kind. I really would like to see what explanation can be given and what excuse can be made with regard to this matter. This libeller of the dead comes here and he says

in his evidence "It is true," although he does not give a single case to prove it. This libeller of the dead comes here beseeching of you to clear his character and to give him damages for what has been said in this book. That was on the 25th April, and there is a good deal more in the article, which goes on and says: "He must have his victims, and like the Rakshasas of old he will carry them to the segregation camp in spite of their protests and wails." Gentlemen, what a picture to set out before these infuriated natives—these persons perfectly healthy, with the plague abating, carried away in spite of their protests and wails in order that the official might have his victims: "We admit that attempts are now and then made to evade the rules by concealing the dead or leaving vacant a house where a case of plague has occurred. But that is no reason why military officers should vindictively overdo their part to the great distress and suffering of the lower classes"—"vindictively," he says. Then: "So long as people conceal their dead, house to house search is a necessity; but it must be remembered that the plague operations now carried on are against the custom and genius of the people, and that it is extremely unwise and tyrannical to increase the rigour of operation on the strength of generalisations based upon a few instances of evasion of the rules. Mr. Rand seems to be either incapable or unwilling to realise the force of this argument, and the whole of the machinery under him works in the same spirit of utter disregard of the popular feeling on the subject. In short they do not know how to adapt their means to the feelings of the people without sacrificing the main object in view, and the result is a reign of terror unprecedented in the history of Poona." Gentlemen, that libel and that incitement against Mr. Rand is practically repeated on page 467: "The soldiers by their actions have struck terror and dismay into the hearts of the people. The terror and consternation of native women can best be conceived by natives alone. In fact, the reign of soldiers is a reign of terror and torture. Every bit of the poor man's furniture is torn and tossed asunder; valuable documents and securities are destroyed; money boxes are broken open; the images of sacred

gods are polluted; kitchens and other places of privacy are freely entered into; the women are made mouths at, and those who are present or otherwise incapable of moving out, are mercilessly dragged to the segregation camp; the most indiscreet attempts are made to swell the number of invalids at the cost of healthy persons;"—a repetition of the same thing—you must keep your number up, therefore do not mind whether they are healthy or unhealthy, drag them out amidst their wails and protests. Then: "Inspection visits have been frequent; each visit causing greatest annoyance to the house owners and greatest insecurity to the property; the disinfecting operations are carried on in the most wanton manner; property is made away with almost with impunity; live animals are thrown into fire." Gentlemen, do you believe an English soldier would throw a live animal into a fire: "Thus manifesting the brutal ignorance the soldiers and their utter unfitness to hold their powers; and lastly people are unnecessarily stripped naked, abused and insulted!!!!! This is a short catalogue of the hardships people are suffering from."

Then later on, there is this. It is headed: "A Bad Selection." The whole of this is imputed to Mr. Rand; "The requests of the deputation that lately waited upon Mr. Rand, if kindly considered, would alleviate much distress. There is, however, no attempt hitherto apparent on the part of the Committee to approach the requests in a friendly way. This cynicism betrays a complete distrust in everything native. Had the plague operations been presided over by a more sympathetic and practical man than Mr. Rand, people would have by this time been relieved of much unnecessary trouble as their co-sufferers in Bombay." Then a little lower down: "Surely it would taint the career of a sympathetic Governor like Lord Sandhurst as having shown gross disregard to the sufferings much more than to the feelings of a people committed to his charge." Then there is a mythological reference and comparison, which I think is of importance: "It need scarcely be stated that this nation of ours has ever been subject to the waves of fanaticism and oppression from prehistoric times. It is

said that in times of old when the earth was oppressed by Asuras or the demons, she flew for protection to Lord Shrikrishna reclining on the back of a Hydra in the milky ocean. She narrated her grievances in detail and prayed for relief. The Lord Shrikrishna lifted up his eye and assumed some avatar and put down the demons. The Poona-earth is similarly oppressed. The prehistoric demons were painted as having black complexions and huge bodies. The present soldier-demons differ only in having white complexions, while resembling their rivals in all other respects. In this crisis Lord Sandhurst is our Lord Shrikrishna, to whom the Poona-earth can go for succour. No doubt our present Lord on finding that the earth was plague-stricken, lifted up his eye, and on his own motion deputed his angels for relief "—that is Rand—"but under the angelic influences he was gone to sleep unaware rather too soon. Ye citizens of Poona who represent the Poona-earth, will ye wait upon his Lordship, reclining under the cooling bowers of a hilly station, and pray for early redress." A more wicked and unworthy article you could not conceive. Lord Sandhurst is doing no such thing. He told you he was working himself day by day, not merely in the houses of this plague-stricken place, but in Bombay and the other parts of the Presidency, and, of course, you see there the picture that is attempted to be drawn that he is reclining under the cooling bowers of a hilly station, allowing all this to go on by his soldier-demons, and this ruffian, Mr. Rand, who is there finding his victims even amongst the healthy in order that for mere malice he might bring oppression and misery on this plague-stricken people. Then at page 470 there is this passage in the "Kesari" of the 27th April, 1897: "If the plague does not cease before the rain commences the other countries will not take the goods coming, not from India alone, but coming also from England, a country that has necessarily to maintain a connection with India, and that injury being thereby caused to the trade of England, both England and India—but England immensely—will suffer loss, and there will be great wailings everywhere. In order that the same may be prevented the present zulum is commenced to be

practised upon us under the direction of Her Majesty the Queen." Then it says at page 471: "In short all people, from Her Majesty the Queen down to Mr. Rand have formed a uniform determination that this arrangement for stopping the plague must be brought into force, happen what might." Then he incites them against the soldiers saying: "But, because power was given to them to inspect houses one should not think that along with it the liberty to commit thefts was also given to them,"—that is the soldiers—"and if we cannot prevent them from committing thefts, it must certainly be said that we are no men. Some entertain a fear that the soldiers will beat them unnecessarily, but in our opinion, that fear is meaningless. Assuming, however, that there is some ground for it, that does not mean that we should allow the soldiers to play any pranks they like, before our very eyes. If we offer resistance to the soldier while he is acting according to the rules laid down for him, we shall be guilty, but there is no offence whatever in preventing a person from committing theft. It is learnt that some days back some ten or five soldiers went into Raste's Peth at night, and created some disturbance for which they received a good thrashing, and that one of them died in the hospital, but just as no one could be held responsible for it, so it will happen in other matters also. Only we should act in accordance with law, and it is not that it is very difficult so to act." Then at page 474 there is another attack on Mr. Rand. This is on the 23rd April: "Such has become the condition of Poona at present, but that does not reduce the blame attaching to the Plague Committee or the Government." What he refers to there is this, he had said before that: "The only consolation among the troubles is that signs have begun to appear of this epidemic abating at an early date and hence there is hope of zulum also disappearing along with the epidemic itself within a short time. The figure of daily mortality in the last week came down to from fifteen to ten and the number of daily new cases is also decreasing. If this very state of things continues for some days, we expect to be free from this scourge before the advent of the monsoon. Such has become the condition of Poona at present but that does not reduce the blame

attaching to the Plague Committee or the Government." There was no credit at all to Mr. Rand or his officers. He says: "Two deputations waited upon the Plague Committee and made a good many suggestions to it, but our Mr. Rand is so stubborn that he patiently heard them and continued his course as before. No matter how rigorous the measures may be, it is not necessary that their enforcement should be rigorous too. Even a convict imprisoned in jail can be treated with kindness; it may, however, be safely said that the chairman of our Plague Committee has not in him even a particle of it"—that is a particle of kindness—"nay, we are even in doubt as to whether that gentleman has the ability to understand how great tasks are to be carried out in a manner pleasing to the people. There will scarcely be found any other officer so unfitted as Mr. Rand, to mix among, and behave in harmony with the people, to hear their complaints and to remove such of them as may be just, to explain to them the objects of government, &c. and a suspicion also arises whether he has been selected solely to give trouble in Poona."

Now, Gentlemen, look at that charge. This is Mr. Rand, and what he suggests to these people is this: Mr. Rand is specially selected because of his cruel, uncompromising, vindictive and scandalous methods of carrying those duties out: "Thus the present condition of the people at this place is as if they were besieged on all sides, and if Lord Sandhurst will not give any consideration to the same, then we regret very much to have to say that he will cause a slur to be cast upon his administration and will leave his name stained as in the case of Lord Harris." Of course several rulers left a stained character in the opinion of Mr. Tilak: "It is never possible for the present Moglai or Randshahi"—the oppression or administration of Mr. Rand—"to continue for any length of time and we do not think that the people, no matter how meek, will put up with this harassment continuously. We therefore request Lord Sandhurst that His Lordship will not try their patience to the utmost so as to make them feel that they had better free themselves from this harassment no matter if they died of plague."

There, Gentlemen, is a direct incitement: "you must not be too meek—you must free yourselves of this harassment—you must get rid of this Randshahi or administration of Mr. Rand." Gentlemen, at the same time that he is opposing Mr. Rand, we come to the examples, and it is very necessary to take these two things together. We come to the examples, and he says: "Here is Rand. Rand is a tyrant, Rand is a kind of person I have just been describing," and he then proceeds to give examples from previous times, and so the Shivaji comes in, and the part of the next article I am going to read is the 4th May, 1897, one of the articles that were given in evidence at his trial, though not, I think, one of those for which he was tried. It is very important to observe these two things run concurrently, first the holding-up of Mr. Rand to all this opprobrium and odium, and then to see when he suggests he should be got rid of, what is likely to be the effect of bringing forward Shivaji in the way he did, and that is really the importance, at this stage, of the text of the Shivaji festivals. Now here on the 4th May there is given an account of a birthday festival of Shri Shivaji and passing over a good deal of it I come to this: "Similar in character was the fight between the inexperienced and slenderly equipped Shri Shivaji Maharaja and the mighty Afzulkhan. God gets such great deeds performed at the hands of human beings themselves (and) therefore agreeably to the adage 'if a man exerts himself he will rise from the condition of man to the position of God' man ought to do (his) duty. We are now"—that is after Rand—"reaping the fruits of our dereliction of duty in the past and in the present. Does not the above show that Shri Shivaji turned to good account (his) hearing of the Ramayana? Nowadays we hear the purans or read stories from books but the only thing we fail to do is to form a firm resolution in our minds after due consideration and to conduct ourselves in a proper manner. The only thing we take pride in and which form the subject-matter of our thought are the writings of one, the nice replies given by another (and) the speeches of a third. So will (our) young men instead of doing this, imitate during their lifetime most of the things recorded in the life of Shivaji and in the

Ramayana? Otherwise it will be just the same whether the festival is or is not celebrated for hundreds of years more. Let that pass. It is, therefore (my) wish that all Hindus shall at the time of the Shivajijayanti think over and cogitate upon the doings, the courage, the firm resolve and the ingenuity of Shivaji, and instead of supplicating the authority for protection lay all (their) complaints before God and lovingly implore Him and perseveringly ask Him again to create among us a Shivaji similar to this." That is a person who would get rid of the oppression which they had been depicting. Just to show you that that was the present state of things, mark this: "Will the remembrance of all the following things (viz.) the present famine, the arrangement made regarding it, the deaths brought on by the 'Politicality' of Government the epidemic of fever, the oppressive measures (resorted to) for its abatement and the effects produced by them be kept alive by meditating (upon them). Otherwise the people (think themselves) free the moment the Queen utters the formula of (these) four words (viz.) 'starve not in famine.' But the number of those dying by the famine is going on increasing; (We) become pleased when the people having already undergone miseries and the gods suffered troubles and Garud who is one for all Hindus having been destroyed, in consequence of the zulum practised on account of the epidemic of fever a Governor afterwards expresses his 'regret' for those occurrences? Hollow words did not please Shivaji. Let not, therefore, such a thing happen. Let this be known. The date is 2nd May, 1897."

Gentlemen, there you see, having held up Mr. Rand, they show the way of getting rid of him. These are the words: "But the number of those dying by the famine is going on increasing. We become pleased when the people having already undergone miseries and the gods suffered troubles." Then, Gentlemen, the next is on the same date at page 478. This returns to the charge of Mr. Rand. This is also one of those that was given in evidence at the trial. "There is no doubt that many people will have their lost courage revived on hearing that several of the soldiers who have come here for the purpose of inspecting the houses are to go back after

eight days more. Everybody already knows now of the excess committed by these soldiers during the Rand regime; and at last even the truth of what we had written is becoming manifest, not only here but even in other places to people like Anant. It is true that Her Majesty the Queen, the Secretary of State and his Council should not have issued an order for needlessly practising zulum upon the people of India"—that is that they had done so—"without any special advantage to be gained, and that the Bombay Government should not have entrusted the execution of this order to a suspicious, sullen and tyrannical officer like Rand; and for this one cannot sufficiently blame the Home Government as well as Lord Sandhurst. But in our opinion it is the duty of our leaders to find out some contrivance for the protection of our people when it has once been settled that Government is to practise zulum (and) when we are convinced that no one up to the supreme authority will and does afford any redress for this zulum as this order has been issued directly by the Home Government itself"—that is that they are responsible for the oppression. Then he says there will be ample time hereafter to revile the Government for its oppressive conduct. I should have thought he had been doing enough without waiting for the hereafter. Then on the 9th May there is a short passage in one of the articles in the "Mahratta": "Only the other day at the dead of night a surprise party besieged a house and carried the inmates by force prisoners to the segregation camp. Even supposing that the people were evading segregation we contend that the brilliant manœuvre could have been made with success in the morning. Mr. Rand is perhaps too callous and heartless to realise that a night surprise by the dreaded soldiers strikes fearful panic in the already panic-stricken people. Mr. Rand really may be complimented upon successfully carrying out his stern policy without even showing that he is susceptible either to mercy or kindness. His actions, however, along with those of the Bombay Government receive strong condemnation from facts and medical opinion. Note, Gentlemen, "Mr. Rand had better mend his ways."

Now, Gentlemen, I pass on. At page 491, on the

25th May, there is a long attack upon the method of the British Government. I will read just this passage: "To add to that, calamities like epidemics and famines are befalling us. The chief cause of these calamities is, according to our old idea, the iniquitous conduct of the Sovereign, and that idea is true at least so far as the famines are concerned. Even the uneducated have now begun to realize that the policy of conduct of our Yavan sovereigns has become spoiled. The other day a merchant came here from Bombay. I asked him about the state of affairs at Bombay. He then said: 'Why do you ask? The policy of conduct of the Sovereign has become spoiled. In the first place one does not know who is the sovereign and who should be obeyed. Great zulum (tyranny or oppression) then is going on.'" Then at the bottom of page 492: "A king, so to say, ought to be a protector of the subjects. That has been our idea up to this day. But if we look at the English rulers, we find that they are wholly bent upon securing their own interest, that is to say, much as the lion is the king of beasts, or the eagle is the king of birds, that is employer of his strength for the attainment of self-interest—so are these our sovereigns." Then he makes a quotation: "'Oh, Lord, the king who receives one-sixth as a tax and does not protect the subjects as his children incurs very great sin.'" Then on the 30th May they state the teaching of the plague: "But very few things can be expected from a foreign and so unsympathetic a Government. There is much that people ought to do for themselves. If the Government policy is fixed and its executive relentless, then it becomes the duty of the educated people to step in between the Government and common people who are most affected by the high-handed rule of Government at a time like that of the plague. But the plague has taught us that co-operation in Poona of educated men for any useful purpose is impossible. The teaching of the plague is very disquieting. For with the hope of such co-operation is lost all hope of the Poona public doing any good to themselves or to others. Many people are tempted to observe that the plague was sent to Poona simply to test what capacity was left in her after

the tall windy talk and dissipation of energy by the educated people in unedifying frivolities. And one will have to admit that Poona did not indeed rise to the occasion. The educated and the uneducated alike shewed signs of an appalling demoralisation. The educated men evinced their pusillanimity by going out of the city and leaving the poor masses to the tender mercies of Mr. Rand and his colleagues. The uneducated showed that they lacked the courage which, for want of education was supposed to be residing within them." Then there is an article on the 31st May in the "Mahratta" where it says: "The rulers believe that the subject if entrusted with arms will some day use them against the Government. The belief is partially well-founded, for the British Government is an alien Government and the subjects in trying to get emancipation will, *if constitutional methods fail*, have some day to resort to arms. But in Baroda, the subjects have a Government of their own. It is also a popular Government. There can be, therefore, no motive for the Baroda subjects to abuse their arms." That is written 22 days before the murder of Mr. Rand. That, Gentlemen, I called your attention to when I was cross-examining Mr. Tilak. You remember the scandalous attack he made on the native princes who had the audacity to come to England for the purpose of what he called "spreading their gay plumage before the eyes of the British public." That is at page 498. He uses insulting words and it is really impossible to have forgotten them: "This royal inspection, we think, scarcely means any other than the inspection by a circuswallah of his brutes in the menagerie or his fancy animals in their cages,"—the venom of the whole thing is what you see.

Now, Gentlemen, I come to the number of the 15th June of the "Kesari" newspaper, that is the one for which Mr. Tilak was prosecuted, and I do ask your most serious attention to this; of course, it may be said why did you read this, he was convicted for it. Is it not enough that you have a conviction for sedition? Probably it might be enough, but it certainly is not the whole thing. There is sedition and sedition, but here exactly within a week followed a foul murder, and here

you have now, after this long campaign and holding up of Mr. Rand with this venomous attack, holding him up to public opprobrium, I think, at least I suggest to you, holding him up to something more, because, over and over again he says he must be got rid of. You have now within a week of his murder these articles which I hope you will seriously consider, because you must remember all those that I have been reading, or the main part of them, was the matter upon which Sir Valentine Chirol was to form the views for which he was challenged in this book, and these articles, or part of them, are set out in the book as showing they were very much before his mind when he came to the conclusions he did, and when you are considering his comments and deductions from the writings and publications of Mr. Tilak you must try to put yourselves in the position of the historian journalist faithfully trying to give the public a real picture of what happened in India and what was the cause of the Indian unrest. Now, Gentlemen, the first of these is the description of the Shivaji Coronation on the 15th June. We find there Professor Paranjpe who was the editor of the "Kal" is stated in Sir Valentine's book to be the editor of the "Kal." I asked yesterday to be allowed to read some contemporaneous articles in the "Kal," and my Lord, of course exercising his judgment upon the law, has ruled it out, but Paranjpe it is well to remember was there, because we know Paranjpe himself was just afterwards prosecuted, not on this charge, but at all events this is the commencement of his association with Tilak: "After the Puran reading was over"—This is a description of it—"Professor Jinsiwale very earnestly requested the audience to study the Mahabharat. Professor Jinsiwale on this occasion said that the reason why Shri Shivaji Maharaja should be considered superior to Cæsar and Napoleon was that while the great men of Europe were actuated by ambition alone like Duryodhana, the uncommon attributes displayed by our Maharaj were not the blaze of the fire of ambition or discontent, but were the outcome of the terrible irritation at the ruin of his country and religion by foreigners"—exactly what he has been preaching as regards Mr. Rand. After the reading of the Puran there was then

something else. "On the morning of the second day there were athletic sports in Vinchurkar's Wada. The students of the new English school and the Nutan Marathi Vidyalaya and the other schools acquitted themselves creditably in their performance with Indian clubs and on the Malkhamb. The students of the new school showed themselves to be proficient in playing Kathi, dandpatta, bothati, etc. We hope that the students of other schools will follow their example." It is said he never brought his propaganda into these schools, and it would be well to bear that in mind as we go along. "The students attending the various shools as well as the people attending the gymnasia at this place will not find a better occasion than the festival of the anniversary of Shivaji's birth for exhibiting their skill in manly sports"—you see how force is mixed up in the whole of this: "If the managers of the various schools take concerted action in this matter, it is likely to give special encouragement to physical and manly sports amongst boys. We hope that this our suggestion will be duly considered by the pricipals of different schools. Well, on the night of the same day a lecture on the subjects of 'the killing of Afzulkhan' was delivered by Professor Bhanu under the presidentship of Mr. Tilak. The Professor ably refuted the charge of murder which English historians bring against Shri Shivaji Maharaj." I pass that by and I come now to this passage, page 503: "The history of Europe cannot show even a single upright man of Shivaji's type. History will find fault with Shivaji but from the point of view of ethics his act does not merit censure"—that is the act of killing Afzulkhan: "How can the European science of ethics, which has 'the greatest good of the greatest number' as its basis or principal axiom, condemn Shivaji for abandoning a minor duty for the purpose of accomplishing the major one? In the Mahabharat a man of this type is called 'enlightened.' The Professor concluded his discourse on the original theme with the declaration that even if the Maharajah had committed five or fifty more faults, more terrible than those which historians allege Shivaji committed, he would have been just as ready as at that

moment to profoundly prostrate himself a hundred times before the image of the Maharajah." That is I suppose if he had killed 50 Afzulkhans in the way in which he had killed the one he would still prostrate himself: "At the conclusion of the lecture Professor Bhanu said: Every Hindu, every Mahratta to whatever party he may belong, must rejoice at this Shivaji festival. We all are striving to regain our lost independence and this terrible load is to be uplifted by us all in combination. It will never be proper to place obstacles in the way of any person who with a true mind follows the path of uplifting this burden in the manner he deems fit. Our mutual dissensions impede our progress greatly. If any one be crushing down the country above, cut him off; but do not put impediments in the way of others. Gentlemen, only a day or two before, and for months, they had been preaching that Mr. Rand was not only crushing down the country, but he was malignantly taking advantage of the country's misfortune to perpetrate oppression and cruelty upon it. Here you have now within a week of his murder: "If any one be crushing down the country above, cut him off." Do not put impediments in the way of others. Is Mr. Rand crushing down the country? We have told you so over and over again in the past two months, cut him off and do not put impediments in the way of others. "Let bygones be bygones, let us forget them and forgive one another for them." That is the natives. Then it goes on: "So saying he concluded his speech." Then again Professor Jinsiwale says: "If no one blames Napoleon for committing two thousand murders in Europe, and if Cæsar is considered merciful though he needlessly committed slaughters in Gaul, many a time, why should so virulent an attack be made on Shivaji Maharajah for killing one or two persons?"—nothing in it, only one or two. "The people who took part in the French Revolution denied that they committed murders and maintained that they were only removing thorns from their path, why should not the same principle be made applicable to Maharashtra?" Move the thorns. If you want them we have told you where they are for months past; according to the French Revolution if you remove the thorns it is no murder, it is meritorious. It is

the kind of thing Shivaji would have done, and after all it is only one or two people: "Being inflamed with partnership it is not good that we should keep aside our true opinions. It is true that we must swallow down our opinions on any occasion when an expression of them might be thought detrimental to the interests of the country, but no one should permit his real opinions to be permanently trodden under foot. Professor Jinsiwale concluded his speech by expressing a hope that next year there will be witnessed greater unity amongst the various parties in Poona on the occasion of this festival. After the conclusion of Professor Jinsiwale's speech, the president, Mr. Tilak, commenced his discourse. It was needless to make fresh historical researches in connection with the killing of Afzulkhan. Let us even assume that Shivaji first planned and then executed the murder of Afzulkhan." This gives you an idea of Tilak's theory of murder, which you find somewhat elaborated when he contrasts the murder of Mr. Rand and that of the Kennedys in the subsequent articles: "Let us even assume that Shivaji first planned and then executed the murder of Afzulkhan. Was this act of the Maharajah good or bad?"—That is on the assumption that it was a deliberately planned murder—"This question which has to be considered should not be viewed from the standpoint of even the Penal Code or even the Smritis of Manu or Yadnavalka or even the principles of morality laid down in the Western and Eastern ethical systems. The laws which bind society are for common men like yourselves and myself. No one seeks to trace the genealogy of a Rishi or to fasten guilt upon a king. Great men are above the common principles of morality. These principles fail in their scope to reach the pedestal of great men. Did Shivaji commit a sin in killing Afzulkhan, or how? The answer to this question can be found in the Mahabharat itself. Shrimat Krishna's advice in the Geeta is to kill even our teachers and our kinsmen. No blame attaches to any person if he is doing deeds without being actuated by a desire to reap the fruit of his deeds." The only test of murder according to him is that you do it unselfishly. "Shri Shivaji Maharaj did nothing with a view to fill the small void of his own

stomach from interested motives. With benevolent intentions he murdered Afzulkhan for the good of others. If thieves enter our house and we have not sufficient strength in our wrist to drive them out, we should, without hesitation, shut them up and burn them alive." Who are the thieves? The thieves there are meant to be the British Government. "God has not conferred upon the foreigner the grant, inscribed on a copper-plate, of the Kingdom of Hindustan. The Maharajah strove to drive them away from the land of his birth; he did not thereby commit the sin of coveting what belonged to others. Do not circumscribe your vision like a frog in a well; get out of the Penal Code, enter into the extremely high atmosphere of the Shrimat Bhagwadgeeta, and then consider the actions of great men." Get out of the Penal Code, do not mind the law, it does not matter. "After making the above observations in connection with the original theme, Mr. Tilak made the following remarks relating to the concluding portion of Professor Bhanu's address." Then he says: "A country which cannot unite even on a few occasions should never hope to prosper." You will ask yourselves, Gentlemen, what all that means; you know now something of the native feelings and frenzy which had been excited: you will ask yourselves what all that means; it is there on record, it is not apologised for in any way. It commences by saying: Let us assume that Shivaji first planned and executed the murder of Afzulkhan. What is likely to be the effect of that when you have found in the district, pointed out and hounded down, the man who is committing the very acts which they say here would justify murder, planned murder, deliberate murder. Then in the same number to make the matter more pointed I suppose, they assume that Shivaji has come to life and they put into his mouth in order to give it greater force and greater potency than probably even so great a man as Tilak might have in Poona, they put into his mouth certain utterances all on the same line—this is all on the one day, the 15th June—all defences of murder, all calling attention to the necessity of imitating Shivaji to get rid of the existing state of affairs. Here it is: "By annihilating the wicked I lightened the great weight on the terraqueous globe. I

delivered the country by establishing 'Swarajya' and by saving religion. I betook myself to heaven to shake off the great exhaustion which had come upon me. I was asleep; why then, did you, my darlings, awaken me? I had planted upon this soil the virtues, that may be likened to the Kalpavriksha, of sublime policy based on a strong foundation, valour in the battle-field like that of Karna, patriotism, genuine dauntlessness and unity the best of all. Perhaps you now wish to show me the delicious fruits of these. Alack! What is this? I see a fort has crumbled down. Through misfortune I get a broken stone to sit upon. Why does not my heart break like that this day? Alas! alas! I now see with my own eyes the ruin of my country. Those forts of mine to build which I expended money like rain, to acquire which fresh and fiery blood was spilled there, from which I sallied forth roaring like a lion through the ravines, have crumbled down; what a desolation is this? Foreigners are dragging out women violently by the hand by persecution. Along with her Plenty has fled, and after that health also. This wicked fortune stalks with Famine through the whole country. Relentless death moves about spreading epidemics of diseases. Say, ye, where are those splendid infantry, my beloved, who promptly shed their blood on the spot where my perspiration fell? They eat bread once in a day, but not enough of that even. They toil through hard times by tying up their stomachs to appease the pangs of hunger. Oh, People! How did you tolerate in the Kshetra the incarceration of those good preceptors, those religious teachers of mine, the Brahmins whom I protected and who while they abided by their own religion, in times of peace, forsook the darbha in their hands for arms which they bore when occasion required. The cow—the foster-mother of babes when their mother leaves them behind the mainstay of the agriculturists, the imparter of strength to many people, which I worshipped as my mother and protected more than my life—is taken daily to the slaughterhouse and ruthlessly slaughtered." Then they give quotations: "He himself came running exactly within the line of fire of my gun." That was Fagin's case reported in the "Kesari," 14th June, 1892, many years before. "I

thought him to be a bear. Their spleens are daily enlarged. How do the white men escape by urging these meaningless pleas. This great injustice seems to prevail in these days in the tribunals of Justice. Could any man have dared to cast an improper glance at the wife of another?'" This is insinuating that that was the condition of affairs then: "A thousand sharp swords would have leaped out of their scabbards instantly. Now however opportunities are availed of in railway carriages and women are dragged by the hand! You eunuchs! how do you brook this! Get that redressed! 'He is mad. Lift him up and send him at once on a pilgrimage.' 'He is fond of pleasure. Deprive him of his powers, saying that it would be for a time only.' This is the way in which royal families are being handled now. What misfortune has overtaken the land! How have all these kings become quite effeminate, like those on the chess-board? How can I bear to see this heart-rending sight? I turn my glance in another direction after telling a brief message. Give my compliments to my good friends, your rulers, over whose vast dominions the sun never sets; tell them: 'How have you forgotten that old way of yours.'" That is signed by the mark of the Bhawani Sword, which we were told was Shivaji's sword, and which means the goddess of destruction.

Gentlemen, you have these articles now before you published on the 15th June, 1897. I submit to you—of course, I have only to make my submission, and am not pronouncing, as I have no right to pronounce, any judgment—but I submit to you that having regard to all that had gone before, and especially having regard to the condition and state of the people, and, thirdly, having regard to the nature of the people and what they felt as regards the mixture of all these religious festivals, and these political matters, I submit to you that it is no wonder, and we should not be astonished, that the murder of Mr. Rand followed under the terrible circumstances which you now know, when on the day of the Queen's Jubilee he was at the President's house at Poona, and coming away from it—from Lord Sandhurst's, who you saw in the box there—he was brutally and violently murdered.

Gentlemen, we say these doctrines led to that. As a matter of comment we say that this is the conclusion we are entitled to draw; you may not agree with it, but that does not end the case; you may not agree with it, but there is another point: reasonably and without malice may he have drawn these conclusions? I ask you to draw the same conclusions, and you will I am sure, in considering it, bear in mind what other object, what other intention there could be than, I will not say to incite the murder, but at all events to bring the people into such a state of frenzy that something should be done by some of the people which would free the country from the terrible state of oppression which Mr. Tilak says existed there; that somebody should be brought forward as a hero to perform that at the present day which Shivaji did some centuries ago. There you have it.

Gentlemen, it is entirely for you to say whether we were justified in drawing that conclusion. We have been told that there was an expression of regret upon the part of this gentleman, Mr. Tilak, when this happened. Well, there is a kind of expression of regret, but it is mixed up with many things I think of a regrettable kind, for instance it begins to make an apology for the people of Poona: "If Rand Sahib himself were to be murdered, he could have been murdered at another place and on another day. It is the plan of the Brahmins alone to render the holiday vapid, by committing the murder on the Jubilee Day."— This is what is alleged: "That too is not the plan of one or two Brahmins, but one devised by about fifty Brahmins in concert. This is what the editor of the 'Times' says, and the Collector Sahib almost repeated the same yesterday in his speech. The 'Times' has also referred to the Wai affair, and someone assuming the name of Justice has rendered all possible assistance in his power to the editor of the 'Times' to connect the Shivaji festival also with the whole of this affair." That is that apparently the "Times of India" took the view at the time that these doctrines which were propounded amongst the people at Shivaji festivals which I have read to you were connected with the whole affair: "As soon as we got the news of this dreadful offence we had prophesied that all this dark imputaion would be brought against us." They

themselves prophesied, that that criticism would be made, that is the criticism for which they are now suing us: "Really speaking, there is no ground whatever to believe that the Poona Brahmins have made a great plot. If in countries such as England, France, or Russia even, some madcaps are found who shoot the King, there is no reason whatever to scatter calumnies concerning the whole of Poona, if some one maddened by the annoyance of the Plague Committee, is found here." Both there and subsequently Mr. Tilak never denied that it was somebody maddened by the annoyance of the Plague Committee, but he says my papers had nothing to do with it, my poor feeble writing could not have had that effect but it was somebody maddened with the annoyance. He states that himself there and he states it afterwards when he comes to deal with the Kennedy case, the case with reference to the bombs. Now, Gentlemen, it was one week after the articles that this murder was committed. Gentlemen, a controversy arises here which is germane to the libel complained of. We say, though it is not part of what is complained of in the book, it was the doctrines of Tilak that led up to this. What did the murderer himself say, Chapekar: "I went to Poona with the whole family, then the operations for the suppression of the plague were commenced and Mr. Rand was appointed the head of the Plague Committee; in the search of houses a great zulum was practised by the soldiers." Was that the doctrine of Mr. Tilak or was it not: "They entered the temples and brought out women from their houses." Was that the doctrine of Mr. Tilak, you will find every word of it: "Broke idols and burnt holy books." Was that the doctrine of Mr. Tilak? You will find every word of this, indeed I put it to Mr. Tilak himself and he said that all these matters were matters that had heen preached by him: "We determined to revenge these matters but it was no use to kill common people; it was necessary to kill the chief man, therefore we determined to kill Mr. Rand who was the chief." Mr. Tilak, of course, tries to say that this was a statement of fact as to zulum practised by the soldiers. There is no evidence of any such zulum at all having ever been practised, the evidence was that Mr. Tilak stated that it

was practised, but when you go on further and read further into his confession, he says this: "Did you ever speak to Mr. Rand?—No, my house was not entered and I was never disturbed." Is not it plain that that young man came into the position in which he was by reason of the teachings which permeated the place at that time through the machinations and propaganda of this gentleman, Tilak, who is asking you for damages here to-day? Gentlemen, there are a number of articles after the murder which I need not call your attention to again. They go on attacking the Government, but there is one incident to which I certainly would like to ask your attention for a moment. There was a Professor Gokhale, who was one of the leading Brahmins at Poona; he came over here to England and apparently he got letters from his friends, whoever they were, in Poona, and he instigated the putting of questions in the House of Commons as regards the outrages committed by the soldiers.

Sir JOHN SIMON: I am sorry to interrupt my friend, but this is a matter I thought which had been ruled upon.

Sir EDWARD CARSON: Oh, no.

Sir JOHN SIMON: I am bound to interrupt, because I should be otherwise accepting it without protest. I venture to think there is nothing in the evidence in this case which would justify what my learned friend is now saying and, of course, my learned friend will not go outside the evidence.

Sir EDWARD CARSON: I will not, not an inch, I can promise my friend that.

Sir JOHN SIMON: I can ask no more.

Sir EDWARD CARSON: Here is what Mr. Tilak says at page 197: "Before I ask you a question or two about your own trial I want to ask you this. Do you know Professor Gokhale?—Yes, I know Gokhale. Q. He died, I think, last year, did not he?—No, I believe it was in 1916. Q. Was he ever in England at the time of the Jubilee?—I think he had returned by that time. I do not know exactly. Q. But he had been over in England?—He had been over here. Q. Do you know that he made charges in England against the soldiers that women had been violated and one had committed suicide?—Yes, he made those charges. I learnt it from the papers. Q.

Never mind how you learnt it. I will ask you a question about that in a moment. Did you know that there was a question asked in the House of Commons to the Secretary of State for India, who was then Lord George Hamilton? —A question was put in Parliament."

Sir JOHN SIMON: If my friend is going simply to remind the Jury of this of course I have nothing to say.

Sir EDWARD CARSON: "A question was put in Parliament, and that the Minister replied that upon investigation there was not one shadow of ground or truth in the matter at all?—Yes. Q. Do you know that then Professor Gokhale apologised for having made the statement?—Yes. Q. Did you then begin abusing him in your Press for having apologised?—He went too far in his apology." Well, now, Gentlemen, do look at that. Here we have all this abuse of the soldiers, all these calumnies upon them and when a specific case is brought and put forward by Professor Gokhale who was a Brahmin himself and a colleague at the time of Mr. Tilak out there although he dissented, I think you will say rightly, from some of Mr. Tilak's methods, Professor Gokhale over here gets a question put in the House of Commons. Was it true there had been an outrage upon women and one woman had committed suicide? And upon investigations the Secretary of State replies in the House of Commons there is no word of truth in it, challenging it before the whole community. What happens? Professor Gokhale very properly apologises as any honourable man would do, but this gentleman cannot bear an apology from Professor Gokhale—it is not his apology, he cannot bear even Professor Gokhale to apologise. So saturated is he with hostility towards the soldiers and all that they have been doing and everything else, the moment Professor Gokhale apologises he begins abusing him in his paper. Gentlemen, what a comfort it must be to have a paper when anybody apologises or does anything else that you do not approve of. You can at once begin showing your venom towards the particular incident. When I ask why did you begin to abuse him, he says: "He went too far in his apology." That was Professor Gokhale's affair, but you see it threw discredit upon the whole of this campaign that he had been waging, just as the report of the

Commission throws discredit upon the whole of this campaign. He begins to turn on Professor Gokhale, to turn the lash on. We are indicted here—I must not use the word "Indicted," I beg my learned friend's pardon—we are charged here with a libel for talking of the use of the lash. Why, nobody ever incurred the displeasure of Mr. Tilak or Mr. Tilak's policy, but he did not get the lash, in his papers. That apology is a most important matter in this case, because it shows that when brought to book and asked to substantiate as Professor Gokhale was, he had to admit that there was not a shadow of foundation. And here is what is said about this incident to which I suggest considerable importance is to be attached upon the merits of this matter. He says this: "Professor Gokhale's apology. We waited for Professor Gokhale's return from England to hear much from himself on the subject of his allegations and their contradictions by Lord Sandhurst. Professor Gokhale coming among us told us much indeed, and perhaps too much." Just look at this, look at the lash: "What passed between the Professor and the Head of the Bombay police, who was the earliest to welcome him, and also claimed the best part of his attention even while on the steamer, is more than we or anybody can say. But the letter of apology which Professor Gokhale addressed to Lord Sandhurst on the 1st of August perhaps betrays the secret"—the police brought about the apology. "The letter is an interesting exposition of a series of psychical phenomena. It is as touching to the reader as humiliating to the writer." That is the apology for making foul charges is humiliating to the writer. "The long and short of the letter is this: Professor Gokhale has successfully settled the 'little question of dates,' and once more established his claim to honesty, which has been allowed to him even by the Anglo-Indian Press. He read violent complaints and bitter lamentations in most of the Indian papers that he received in England, about the Poona plague measures. These were confirmed by private letters of friends. And so he was led to believe in their truth. In the meantime the murders of Mr. Rand and Lieutenant Ayerst raised a storm of public feeling in England that threatened to swamp the character for

loyalty of the Indian people. Professor Gokhale thought that by disclosing certain information within his keeping he could give such a turn to thought, that the British public opinion would get a statisfactory explanation and discharge the Indian people of disloyalty." You see there what he suggests: When the murder of Mr. Rand came Professor Gokhale thought he would turn away the anger of the English people from Poona by having questions asked in the House as to whether there was not really justification of some sort which brought about this murder: "The information when disclosed created a sensation and turned the wrath of the public against the Bombay Government. Lord Sandhurst came forth to contradict. The contradiction was of course to be accepted. Professor Gokhale hoped he would get his friends to substantiate their information, but he hoped in vain. He had nothing left but to apologise; and therefore he did make a general withdrawal of his allegations, a complete retraction of his words and an unqualified apology to Lord Sandhurst, the Plague Committee and the British soldiers engaged in the plague operations. Of course Professor Gokhale has done what a gentleman should do, namely, offer an explanation and apology for his statements when it is found that public utterances damaging to the credit and reputation of their persons, cannot be fully substantiated. It was hoped that the explanation would satisfy Government. But the speech of Lord Sandhurst is a little disappointing in the matter, for he is reported to have remarked, in a complaining mood, that an apology for making base allegations in England was all very well, but that it could not make amends, for having given currency to malevolent inventions five thousand miles away where prompt repudiation was not easy. We submit this language after such a complete, unqualified and humiliating apology was rather ungenerous, when the Professor's worst fault was a hasty and indiscreet judgment." That is really charging the soldiers with ravishing women and driving them mad. "It is improper to still persist in branding Professor Gokhale's allegations as 'malevolent inventions.'" Then on the next page, 532, he thinks that

Professor Gokhale ought to have stuck to his guns: "With such authority for belief in the truthfulness of his information, it is perfectly natural that Professor Gokhale believed in it. The only unnatural thing is that he should reproach himself for doing so. For, for a man removed 5,000 miles away, what more evidence on earth was needed and could have been granted, for putting belief in a certain thing when the most truthful friends and the most sober papers vouched for its truth?" That is, he gets Tilak's paper in England, and he reads about these terrible things, and he then puts a question or gets this question put in the House to draw the indignation as regards the murder of Mr. Rand. What more does he want than these sober papers and these truthful friends? Why should he, having these before him, when he found out that he could not substantiate a single line of what he said—not stick to the papers and his truthful friends, and not go so far? "We venture to think, in attempting a possible aversion of one calamity Professor Gokhale has, of course unknowingly, only ensured and accelerated another certain calamity. His charges, even if true and proved, might not have vindicated the people's loyalty. But now that they stand unproved and contradicted, they nay, as if on an admission, be damned by the British public with disloyalty and with vengeance. So long we were only disloyal. Now we are 'malevolent' and mendacious' to boot." Really, Gentlemen, the impudence! It throws a light on the whole mentality of this gentleman; he says you should not have apologised; even if the thing was untrue why apologise? We were only charged before with disloyalty, "but now that they stand unproved and contradicted, they may, as if on an admission, be damned by the British public with disloyalty and with vengeance." Stick to your lies about soldiers, and their outrages upon women, it is necessary to do it for fear you will be damned with disloyalty and with vengeance. Why, Gentlemen of the Jury, a greater incitement to lie as regards what had been taking place in Poona could not be conceived, and that man comes here to ask damages for libel. I say it is an outrage upon our Courts that a man of such a

character could suggest such a lie. Go on lying, lying, lying, and support me, is what he means in the whole of that. I say that that incident as regards Gokhale throws a light upon this matter which you cannot leave out of your consideration showing what sort of a man he was in trumping up and manufacturing these charges against worthy men here trying to do their best, culminating in the murder of Mr. Rand, and then, when brought to book, to produce a single instance of this, and the whole matter is ventilated in England, he says: Why Gokhale, you wicked man, do you bring us into this condition, why do you bring discredit upon the people of Poona? You should have stuck to your guns, relied on on the truthfulness of your friends and my newspapers, the gospel of truth in the "Kesari" and the "Mahratta." What did it matter, it was only English, foreign soldiers, it was only they who were being held up to odium, these men who are only fit for war and for nothing else, what do they matter as compared with me, me, Tilak, the great leader and priest of the Brahmins, the professor, and the lawyer, and the owner of these two newspapers? I say, Gentlemen, that there never was a more outrageous suggestion than what he makes as regards this Professor Gokhale, but at all events, whatever else is to be said of him, anybody reading this book would see one cannot agree with everything that he has said, whatever else was to be said of him, he had the honour—let it be said here in a British Court to his credit—when he was misled by newspapers and by truthful friends, whoever they were—because although they are described as truthful friends, I asked Mr. Tilak who they were, and he could not tell me, nor could he tell me anything about them; he knew nothing about them—he had the honour to withdraw his statements and apologise. That incident, I say, brands Mr. Tilak in this Court as an unreliable man, prepared to go great lengths, prepared to back up false things that have been said, and I say this, and I am all the more earnest about it, because I do not believe —at least, I ask you not to believe, I am an advocate and I have no beliefs myself, and I am not entitled to have, I am merely putting the case—I ask you to believe that from beginning to end there is not a shadow of

justification here, and it is right to say that there is not a shadow of justification for the gross charges that have been made against our soldiers, of whom at all times I hope the nation are justly proud, and under all circumstances, whether it be of warfare or circumstances of peace, when put to these horrible duties which they had to perform, and which I suggest to you they performed with a moderation and clemency that has always done credit to the great tradition which they tried to uphold.

Gentlemen, no wonder Lord Sandhurst made a speech about all this. Lord Sandhurst could have been cross-examined on to the last extremity. We brought him here for the purpose. He was the Governor of Bombay at the time, and here is his speech, it is not invented in this case, because it is published as far back as 1897. But what does he say? He gives a description of Mr. Rand, and he gives a description of his connection: "No more people left the city, and they began settling down to their avocations"—that is when the soldiers came. "Mr. Rand, with whom I was in constant touch, wrote to me that since the operations had begun, on the 13th March, the exodus had stopped. Not only so; long before the operations were over, the people were returning in large numbers. Other equally erroneous statements besides those I have mentioned were made in the various petitions, I had it from Mr. Rand's own lips and from many other sources that he did make all possible inquiry in regard to the things which were brought to his notice. Not only so, he posted a statement in the vernacular, pointing out that complaints should be made on the spot, if possible, because identification might be difficult later on. There was every anxiety to get at the bottom of grievances and remedy them. Some people may say that is not the fact, but in reply to that I may say that that dead man's word is good enough for me. Of course the measures to which I have referred were inconvenient and unpleasant"—he said so in the box again—"nobody likes a party to come into their house, nobody cares to be made to go into hospital, and so forth. But what the people would not do for themselves

we had to do for them in the hope of stealing a march on this almost not to be defeated enemy." He says then: "Now I should like to ask how all these ceaseless and unselfish efforts are met by a certain section of the people of Poona? They were pleased to put in the background all the generous assistance, the voluntary and the self-denying energy that was shown by all those who endeavoured to do good and instead to misrepresent —misrepresent is a mild term—the objects and the measures, and to assume and to put about that they were instigated by cruelty, greed and lust." That is Tilak: "Also what happened after Mr. Rand had been shot, and when he was lying at the point of death?" Now do mark this, Gentlemen: "It was then that this question was prompted and found vent in the House of Commons, and without a word of generous recognition of the energy, the sympathy he had shown, the untiring and ceaseless watch that he had kept over the plague operations. The feeling that promoted those questions is one which I believe is repudiated by a great proportion of the native inhabitants not only of the Bombay Presidency but also of other parts of India. Then it is true that an apology and a withdrawal has been made by a gentleman whose name was prominently for a few days before the public, but it is very easy thousands of miles from here to make statements which have not a shred of foundation, but which such a man may deem good enough for the English people—statements which show this and show that. That is very easy. It is also very easy to come back and say 'I was misinformed, and I apologise,' but the harm has been done in spreading abroad these foul unfounded accusations and attacks, and while I recognise that the apology has been made, I might tender the advice that in future when it is thought necessary, as it may be at times, to offer criticism—and I have never complained of criticism, if it is necessary to make statements of that kind they should be made here, where they may be inquired into, and, if untrue, contradicted, and not made so that they may gain currency all the world over before an answer can be given." He pays a tribute to Mr. Rand and to the British soldiers. Then he says: "Now I must say a word about the soldiers, regarding whom

these calumnies have been sown broadcast—I should think as a matter of fact they have commanded very little respect and credence—but they have been made. It is not to be supposed that when these charges are made, when they are the subject of questions in the House of Commons, that commanding officers can sit quietly by and hear the characters of their men impugned, or that the private soldier himself does not feel the very greatest and gravest indignation. 'Are not Commanding Officers jealous to a degree of the reputation of the men whom they command?' And I know full well they would be the first to single out and punish any individuals who had been detected in crimes of this description. And is not the private soldier equally proud of his own reputation and that of his comrades and his corps? All I can say is, that from the inquiries I have made, I believe that nowhere in the world could operations of this description have been carried out by any class of people more ably, more thoroughly or more considerately or humanely than by the body of soldiers employed in plague work in the city of Poona. I tender the thanks of the suffering public of the Bombay Presidency to all the civilian officers," &c. "I have made this speech on my own responsibility as being responsible for the department which has administered the campaign against the plague. Without disrespect to this honourable Council, I have one regret about this speech. If I may say so, I should have liked to make this speech before a full body of those who have so villainously traduced the soldiers face to face with their accusers." Gentlemen, that is the case with reference to the murder of Mr. Rand and all these matters that preceded it. Having read what I have, Gentlemen, I merely once more draw your attention to what they complain of, now that you have it all in chronological order before you: "What Tilak could do by secret agitation and by a rabid campaign in the Press to raise popular resentment to a white heat he did." That they complain of that: "The 'Kesari' published incitements to violence which were put into the mouth of Shivaji himself"—they do not complain of that—"The inevitable consequences ensued. On June 22nd, 1897, on their way back from an official reception in celebration

of Queen Victoria's Diamond Jubilee, Mr. Rand, an Indian civilian, who was President of the Poóna Plague Committee, and Lieutenant Ayerst, of the Commissariat Department, were shot down by Damodhar Chapekar, a young Chitpavan Brahmin, on the Ganeshkhind Road. No direct connection has been established between that crime and Tilak." Then comes the real charge that Sir Valentine Chirol makes as regards Mr. Tilak, which is not complained of, curiously enough, in the libel, and it is very, very hard to understand why. It goes on in this way: "But, like the murderer of Rand and Ayerst—the same young Brahmin who had recited the Shlok, which I have quoted above, at the great Shivaji celebration—declared that it was the doctrines expounded in Tilak's newspapers that had driven him to the deed. The murderer who had merely given effect to the teachings of Tilak was sentenced to death, but Tilak himself, who was prosecuted for a seditious article published a few days before the murder, received only a short term of imprisonment, and was released before the completion of his term under certain pledges of good behaviour which he broke as soon as it suited him to break them." Well, Gentlemen, I have pointed out what it was the murderer Chapekar said, I have pointed out to you that they are the exact doctrines preached by Mr. Tilak, and I confidently leave this branch of the case in your hands. I say again, as I said before, as an independent journalist writing the history of the unrest in India from 1893 to 1899, to take the period through which we have gone, there is not one word of the book which he desires to withdraw; there is not one word there which, in his conscience, he could deny if he is to be a conscientious journalist, or to write anything for the benefit of the public at all. I say, and I repeat it over again, and if I am wrong that will add to the damages I suppose, that a journalist of this class has a great public duty to perform and he is lacking in his duty if he does not perform it fearlessly, and in accordance with what he believes to be the true state of affairs. Sir Valentine Chirol refers you to these books, he refers you to the material that was before him, and to his own experience in India, and he says there is nothing he wishes to withdraw or apologise

for in reference to these matters.

Gentlemen, of course, I pass over what you remember so well, that Tilak was tried and sentenced to a year and a half's rigorous imprisonment, and you will remember that the Judge said he entirely approved of the verdict. After a year or less he was allowed out, on entering into arrangements which have been already read to you. Gentlemen, one would have wished that having undertaken not again to indulge in the same kind of matters, that Mr. Tilak had turned his attention to doing something in a really effective moderate way, as he might have done, for his country. No man could have applied himself better—not by violence, not even by violent writing—and no man can read some of the articles in these books—I do not wish to do him an injustice—without perceiving his great ability and great thought, and if he had applied that ability and thought for getting reforms carried out, there is nobody certainly who could have blamed him. From 1896 down to 1905 he seems to have remained quiet. He was asked nothing about the intervening time at all. It was no affair of mine to go proving into what he might have been doing in that time. We know that he went and asked employment in translating Sanskrit, or something of that kind, for which work he was no doubt very expert, from the gentleman I produced before you who I may describe as a somewhat difficult and irresponsible witness, whom we had great difficulty in getting anything out of.

Sir JOHN SIMON: Not irresponsible.

Sir EDWARD CARSON: He was in this sense, that he could not answer a question without giving a history of his whole career in the administration of his office. It is the kind of way which many of us get into when we have been a long time in a particular office—neither my friend nor I were long enough in office to become saturated with the official mind and the red tape. Gentlemen, I pass over therefore from 1897, and I come down to 1905, travelling as it were, in an aeroplane at a terrific rate, as you will be glad to see. But, Gentlemen, in 1905, as I said before, there came another opportunity to Tilak which he could not resist. The Bengal Partition came up, as I told you, and created a tremendous fury

throughout Bengal, and apparently the rest of India: I am sure I do not know what the merits or demerits of it were, and I think it is very difficult to understand it at this time. It is nothing to us, but what is common ground and common history is that it created vast excitement in India as everybody knows, and everybody remembers, who had anything to do with political administration at that time. Well, he found again a good beginning for Swadeshi activities. As he was growing older—he is still a comparatively young man—he does not seem to have at all matured; Mr. Tilak is not a kind of wine in a bottle. Commencing in 1905 he joins in the organisation of a widespread movement throughout the whole, certainly of the Deccan and of the Punjab, and I think there is evidence that it went as far as Calcutta and Bengal, and I do not know how much further, but it is not necessary to go into that. He conceives—we had some evidence of this having been in his mind some years before—he conceives the idea of waging a kind of economic war on England, into which he would bring and bring up all the youth of the country in the schools, and in the colleges. He knew perfectly well that that was a kind of matter which must lead to very great feeling as between the natives and the British Government, but he does it most deliberately. He establishes what is called Swadeshi or boycott.

Now, Gentlemen, as part of the propaganda of Swadeshi, he makes use of the Ganpati and the Shivaji festivals, or let me put them in the other order, the Shivaji and the Ganpati festivals. Gentlemen, a lawsuit and the conduct of it is really a very funny thing, because even up to the last day we were taking evidence in which my friend still persisted in saying that the Shivaji festival was nothing really more than an attempt to bring about the proper care of the old tomb in which the remains of Shivaji are supposed to be reclining for the last two years—a kind of archæological function. Gentlemen, Sir John says—and if I were in his place I would probably say the same thing—how can the Shivaji be a wicked thing when the Maharajah of Kolhapur, who is a direct descendant, was a gentleman whom you yourself in your book praised—how can it be wicked? He is a direct

descendant, I think Sir Valentine Chirol himself told us, and he has continued to be a friend of Tilak, and he took no part in the kind of thing to which I am now going to direct your attention. Gentlemen, the British Government gave a subscription some years ago (I do not think it appears exactly what year) towards the upkeep of the tomb of Shivaji. Gentlemen, I do not think I need labour that very much. The British Government has one great merit, or one great failing, whichever way you look at it, and you will find there are two schools of thought about it. They very often think that by acting generously and by showing sympathy with a movement of that kind, so far as it was restricted to keeping up the tomb of a great national hero, as undoubtedly Shivaji was, that they do a good thing to show sympathy with the native races over which they rule by giving a subscription to such an object, but to build upon that that they thereby thought legal everything that the Shivaji did is an entirely different question. Gentlemen, you will find that in 1905, indeed Mr. Tilak himself told me so, the Shivaji began to be a great political movement. If it had not begun before it certainly began then with ramifications everywhere, certainly between Nasik and Poona, and you will find in 1905 at a birthday celebration at Amraoti considerable advance is made, and we have an account of what Mr. Tilak himself said amidst loud applause. His whole lecture is set out here. I am not going to read the whole of it, though I daresay it would be very well worth reading. At page 572 he says this: "Do we celebrate the festival which we do in honour of Chhatrapati Shivaji for the sake of pleasure? No. What is a real festival? (The answer is)—that which helps our progress. While living a worldly life, man spends all his time solely in the anxiety as to how he would be able to provide for his eating and drinking. This is not good. Every one has, of course, to provide for his maintenance; however, even under such circumstances, on one day at least, during the whole year, man ought to consider whether the condition of his village, country, society and the nation in general is good or bad. If the state of his country be bad, he ought to find out what means there are for the improvement of the same; and it

is for this very reason that this and other facts of similar nature may be well impressed on our minds that a festival is held in honour of Chhatrapati Shivaji. The object of this festival is to secure our progress." Then he says: "In exactly the same way the celebrations of festivals in honour of the great heroic persons from among us, like Chhatrapati Shivaji, are object lessons calculated to produce in the minds of people in general a desire for their prosperity and to show them the ways of attaining the same. The whole nation is, so far as this matter is concerned in the position of students, and every student must be ready to do his duty in this particular. From the Christian year 1818 down to about the year 1885, a national festival of this sort has nowhere been held. It is not that we do not hold any celebration whatever." Then he goes into that. Then: "These celebrations are held, not for the comfort of cattle, but are held for the gratification of the desire for the same on the part of their master. The festivals which we need are different from these. We want festivals of a sort, wherein we can see the picture drawn of our condition. It is extremely necessary that there should be a festival which is suitable to our present condition or which may be useful for the improvement of the same. The Shivaji festival is of that sort. About 20 years ago, at the instance of the late Justice Ranade, a meeting was held at Poona and a resolution was passed for a festival being held in honour of Chhatrapati Shivaji. From that time, this festival, passing through a great many troubles, has continued to be held up to now. All those that have received English education feel in their minds that there ought to be festivals calculated to bring about national awakening, but between the political condition at the present time and the political condition which existed in former times there is a difference as vast as there is between the earth and the sky. Although there were many kinds in India, still, since they all belonged to this very country, it was considered a duty of the time, on the part of any one of those kinds, to entertain a desire for the rise of the people of his territory. In Shivaji's time a change had taken place in the nature of this duty. The persecution by the Mohammedans had become unbearable

at that time, and to stop it was the duty of that time. The direction of the duty of the present time is different even from this. We have to make efforts for securing the prosperity of Hindus, Mohammedans, Christians, and all other people of India, but the desire for prosperity which is at the root of all, is one and the same, and for the very purpose of awakening the same, we want festivals like the present. Looking at it in any way—we find that at present a shadow has fallen on us, and for removing the same we must consider our condition. Is it sedition to consider about our condition? Is it an indication of sedition to improve our condition? I, for one, am clearly of opinion that he who maintains that the condition of his subjects should not improve is no king." Gentlemen, this same article goes on and points out a good deal about the festival, but then it takes up this: "Lord Curzon says"—he had become Governor General of India, and, of course, came in for abuse—"'the educated people of India should exert themselves for their elevation, considering that the uttermost limit of their rise is a recognition that the Hindu subjects are the limb forming part of the English Empire.' It is all right, but whether this limb is to be a living limb or a dead limb, that has not at all been clearly stated by his Lordship. Will any educated man whatever be prepared to become a slave or a dead limb of the English Empire? And if we are to be a living limb, then ought we not to make an endeavour in order that our ruler may honour us by accepting the help of our intelligence, of our valour, and of our capability. He who comes in the way of this our progress is our enemy—be he in private service or in Government service, be he Hindu, a Mohammedan or an Englishman. What else is he who comes in the way of the lawful desire on our part for progress, if not our enemy? If we did not keep off the enemy of this sort the accomplishment of the national cause would be impossible. The Lord Shri Krishna, in the Bhagwadgeeta says thus: 'For the protection of the saintly or the virtuous and for the destruction of the evil-doers, for the sake of the firm establishment of Dharma'"—that is religion—"I am born in every age. In this Shlok Shri Krishna does

not certainly say 'of Christians' or 'of Mussulmans' instead of 'of evil doers.' What is contemplated here is advantage and disadvantage. What we now call Dharma in our language, is not the thing contemplated. He who entertains the desire for progress must be considered a saint, and he who causes hindrance to progress must be considered wicked. When that hindrance is removed the way to progress becomes easy." Now, Gentlemen, mark this: "Chhatrapati Shivaji removed the hindrances that came in the way of our progress and thereby cleared the path. His intention was not to kill Afzulkhan; what he wanted to do was to remove the obstacle that came in the way of progress of that time."

Gentlemen, there you see the political aspect of the whole of the subject-matter put forward, taking what Shivaji did as a great object to bear in mind in the progress of India. Then at page 575 there is a short passage: "A certain author had said: 'The Asiatics are an imbecile people. They are not capable of doing any national act whatever.' The delusion has been removed only recently by Japan, but if we had thought about this being already before this, our delusion would not have remained this day. It need not now be told afresh that we have become the conquered by the help of our own people. We have the ability also to do the leadership of an army, but owing to our having been placed in adverse circumstances, that qualification does not become manifest. It is as it were enclosed in a box. We must consider how that box can be opened at least partially, if not wholly. In short it is indisputable that such encouragement as would be received from the celebration of the festival in honour of Chhatrapati Shivaji, for the manifestation of the qualities latent in our bodies, or such progress as would be made by us by means of the celebration in honour of the festival of the Chhatrapati should never be hoped for from celebrations held in honour of foreign heroes." Then it gives a long account of an anniversary in June, 1905, to which I would only call your attention to one short passage: "We may safely say that the object of holding a Shivaji festival has to a considerable degree been fulfilled, even if people generally have begun properly to understand the real

nature of the English policy. Finally the president said: 'Keep the example of Mr. Rajwade before your eyes. These are the persons who shew that Maharashtra is still a living country.' After the president had thus spoken he thanked those who had rendered assistance in bringing to a successful end the Shivaji festival, viz., the persons who performed the Kirtans, those who recited the Puran, the lecturer, the 'Sanmitra' Samaj, the boys from Nasik, the Secretary, the painter, and those other persons who had laboured for the festival and the owners of the temple. The Sanmitra Samaj having then sung some songs the festival came to an end." Gentlemen, you there see the boys from Nasik came over to Poona to help the celebration, and you remember that we have traced a considerable intimacy between Nasik, where ultimately these conspiracies to murder Jackson and to wage war upon the King which now we have in evidence, were held, and what I am really now dwelling upon is to show you some of the material that Sir Valentine Chirol had before him when he was drawing his conclusions as regards the murder of Mr. Jackson. I need not go at any great detail into them. I think it is sufficient to say this, and it cannot be denied—article after article can be referred to—that the Shivaji and Ganpati movements were turned into regular methods of organisation and propaganda with a view to bringing about a more organised resistance to British rule, and with a view to obtaining that very indefinite thing which we all call independence, or, as they call it, Swaraj, Swaraj being the matter which Shivaji in some of these matters I have read out to you said he had obtained for his own country. Gentlemen, all this is essential to bear in mind, because it is part of the material on which the historian has to found a real true view and present it to his readers of the unrest in India, and you find from 1905 down to 1907 a great many meetings which I am not going into in the course of my address now, because I would not be justified in giving you so much trouble about it, but I think you will take it from me, having regard to what I have already stated to you, that all these were part of one great movement. I read to you many cases where they set out a number of celebrations that had been held at a great

number of places in the Deccan, particularly Nasik and Yeola, and various other places all of which show the same state of affairs existing. Gentlemen, what all that was for was to promote methods of opposing Great Britain and freeing themselves from British rule—Swadeshi, the national boycott. There was an article setting out the whole object of this, and the whole method of carrying it out, at page 597. That is in 1905. It is headed: "National boycott," and refers to a resolution passed of the boycott of English-made goods at a grand public meeting of the Bengalis held at Calcutta. In it you will find the usual abuse of England: "It is not that our rulers are not aware of the fact that India has been, under the English rule, declining in heroism, wealth and courage and becoming weak; but why should those men, who get to feed upon India, take this thing into consideration. If India were to be ruined or if the inherent pride and strength of will of the Indian people were to disappear, what are the rulers to lose thereby?" It is the same old ground of oppression. It says: "When the rulers dot not listen to (i.e., comply with the demands of) the subjects, the subjects get exasperated and are led to punish the king." Then it gives an instance in English history. Then it goes on to say how national boycott is one of the remedies: "But when the indigenous goods are not available, why should we not purchase goods of at least any other country rather than purchase the Vilayati (i.e., English) goods, and thus manifest our indignation which has arisen in our hearts towards the Englishmen who show disregard to our demands." Then he says later on: "If we firmly resolve that we should not at all purchase the Vilayati (i.e., English) goods as such and that in case of helplessness we should purchase the German, Japanese, or American goods, then who is so powerful as to lawfully make us deviate from such a determination." Then he says that they should hold meetings at various places. Then in 1905 he says in that same article: "The national boycott is no doubt a proper remedy, but its fitness lies rather in action than in words." Then in August, 1905, it gives an account of a meeting at which Tilak was in the chair, and when it said he did not bring his propaganda into the schools, mark this:

"A resolution expressing sympathy for the determination made by the Bengali students to use country cloth was passed; and it was resolved that all the students with the consent of their guardians should take oath to use country cloth from to-day. At the meeting Professor Paranjpe, Ra. Chinchalkar, Ra. Savarkar and one Bengali student made speeches." This is when Bengal students made speeches. I will say a word about Savarkar, as I did before, later on.

Now, Gentlemen, take the Ganpati festival. You will find in September, 1905, that the Ganpati festival is treated in exactly the same way. He said: "The festival of Ganpati is indeed a religious festival. But the spreading of political questions and political education among the masses is the predominant objection therein and not mere devotion. And it is for the very purpose of accomplishing that object that effort is made to introduce political subjects into the Melas." Then later on he says, and really this is the keynote of it: "Under these circumstances, if you have the means it would be preferable to open orphanages and save the poor from missionaries. But on account of poverty we have not the means to do that. Therefore this festival is the best means to create a sort of religious frenzy. 'Matters not if I lose my life, but I die a Hindu.' Such firm resolve will be created by this festival. The disappointment above alluded to must disappear. Where there are the Prince of Yogis (i. e., the Supreme Being) and the Archer Arjun, that is to say, where there are religion and effort attended by action, there wealth and glory must follow. And for this very reason devotion to God and effort, both these things must be made to go together. For other sins, whatever they may be, pardon may be obtained in the Court of Yama. But no pardon can be had for the sins of hatred to religion and hatred to the country. After this, the chairman, Mr. Tilak, while concluding the subject said: When this festival was first started, that is to say, when the present aspect was given to it, 'political training' or 'public movement' was the sole object of the starters. Consequently there is nothing wrong in that public matters are considered before the Ganpati."

Gentlemen, I am not going to read a large number of articles to show the real meaning of Shivaji and Ganpati. There were meetings for propaganda which required students and teachers to attend, and you will find gymnastic exercises and all these other matters which are held to be the proper way to bring up and teach the children real, active hostility towards their rulers. Now, Gentlemen, do look at what Swadeshi was, and do look at what was laid down as regards it. Better have Swadeshi and anarchy than be governed by an organised administration of English leeches. There was a vow attached to it. What was the object of it? First, what was the result of breaking the vow? It was death. I must just for a moment call your attention to this part of the matter in the examination of Mr. Tilak as regards this Swadeshi, because it was undoubtedly the Swadeshi as an implement for gaining Swaraj that led to the formation of all these secret societies. At Question 1779 I begin to cross-examine Mr. Tilak about this: "We will see by your writing. I thought I might have shortened it. Did you and those who were acting with you advocate at Shivaji and Ganpati festivals the entire boycott of English goods?—We advocated it always. Q. Did you advocate at the Shivaji and Ganpati festivals the entire boycott of English goods?—We advocated it always: it may be also in the festivals. Q. You did advocate it then. Always. Did you lay down that it would be better to have Swadeshi anarchy than to be governed by an organised administration of English leeches?—Shall I answer? Q. Yes?—I did not advocate it in those words, but it is in the paper." I quoted from the paper: "It is a translation of the maxims that were preached in England. Even a bad native rule is better than efficient and despotic rule. (Mr. Justice Darling): Repeat those last words. What did you say is better than efficient despotic rule?—Even a bad native rule. (Sir Edward Carson): Did you cause the students in the school to be taught Swadeshi?—By whom? By me? Q. To be taught Swadeshi?—Not in the schools. I gave public lectures. Q. Did you call upon the teachers in the schools to teach their students Swadeshi?—Not call upon

teachers. We advocated it in the papers that it should be taught in schools. Q. You did advocate it should be taught in schools. Very well. Did you teach the children in the schools to burn everything English? I did not teach it in schools. Q. Did you advocate it?—Not everything English. Q. How much English?—There was a bonfire made of foreign goods once, and at that time I spoke and I said that you had better commence your vow of Swadeshi with sacrificing something. Q. Was there a vow of Swadeshi?—That he would use one or two articles prepared in the country in preference to foreign articles even at a cost. Q. Are you suggesting to the Jury that was to promote home industries?—Well, it was. Q. That that was the real object of it? I put it to you, Sir, it was to promote anti-British feeling to bring about Swadeshi?—No. (Mr. Justice Darling): What were the British goods that you had burnt?—Cloth. Sugar and cloth were the two chief articles. Q. Were they goods you could have produced at home?—They were produced on a large scale. Q. Then Sir Edward Carson suggests to you you did this to promote home industry; did you hear the suggestion that that was done with a view to promote home industries?—To protect home industries. Q. That is what it was for?—Yes, it was a protection for home industries. (Sir Edward Carson): There was nothing political about it?—It came in Bengal in 1905 politically; not till then. Q. Then was it used for the purpose of promoting a campaign against British Government?—Not against British Government. Q. Against what?—Against the partition of Bengal, to get that cancelled. Q. Was that an act of the British Government?—It is an act, but it is not British Government. Q. You yourself went so far as to say, did not you, or write, that you would rather than print the 'Kesari' on English paper, print it on German and Austrian paper?—Anything—it is a protest. Q. German and Austrian paper?—It had never been printed on English paper. Q. Did you yourself lay down that rather than print it on English paper you would print it on German and Austrian paper?—I said it was printed on German and Austrian paper all through." Then he says that in 1905 it was industrial as well as political. Then I asked

him about the Ganpati. Then I asked him: "Did these people who debated this policy take an oath or a vow?—They took a vow. Q. What was the vow?—That they would use certain articles, one or two were named, in preference to any others even at a sacrifice. Q. Did the children take that vow?—Not the children, they must be men of age. Q. Did not the students take it?—Yes, if they were over 21. Q. Schoolboys?— No, not under 21. Q. Are you able to say that?—The form of the vow itself stated that the man must be over 21. Q. I will pass on. The Swadeshi movement grew very much, did not it, it extended very much?—Yes, it extended all over India. Q. I am not going through all the articles but turn to page 374," and so on. I asked him that. Then I say: "Was not Shivaji and Swadeshi all mixed up?—No, they are not all mixed up. Swadeshi was preached on every occasion at every festival." Then I quoted to him a passage which says: "'Great hopes are entertained by the people here as regards the Swadeshi indigenous sugar. Foreign sugar having been served on leaf-dishes at the house of Rajeshri Mungekar, the people discarded the leaf-dishes at the suggestion of Rajeshri Parulekar.' Then: 'At night a picture of Shivaji Maharaj was taken out in procession, seated in a palanquin and some persons swore in the presence of the deity that they would use Swadeshi articles and not drink liquor.' Then at Belgaum were there wrestling fights? Your Lordship will remember in the earlier articles it is complained of: 'small and large wrestling fights, distribution of prizes, etc. were gone through.' Dandpati I am told is fencing." Then I go through various other matters in connection with it, and later on I quoted to him this article from page 754 in the book and Question 1852 in the Notes: "There has appeared in the issues of the 'Kesari' from time to time a discussion about the headmaster of the Thana High School having dismissed several boys from the High School on account of those boys having discussed the Swadeshi question in the boys' private meeting and about the correspondence which in consequence thereof took place between the guardians of those boys and the Director of Public Instruction in the Presidency of Bombay. Ra. Ra. Narayan

Anant Manohar, the guardian of two of the dismissed boys, having made a representation to the Bombay Government on the date the 2nd of May in the year 1906. . . . The Government has not in this resolution expressed its clear opinion upon the questions raised by the guardians of the boys dismissed from the Thana High School. About the general questions, whether the teacher should command his students and whether his pupil should obey his teacher and such other things neither the guardians nor anyone else has any dispute with others. A Government resolution was not necessary to tell the people that if the students violated general and all approved principles of morality prevailing in the community in which both the teacher and the student live, the Guru (teacher) has a right of telling a few words of advice to his students; and that the teachers in England and in Europe do exercise such right. The question which the guardians of the Thana boys had placed before the Government was of this nature that when a movement like the 'Swadeshi' movement which is shaking the whole nation is going on in their particular village or in their country, and when the majority of the nation have been struggling hard for the success of that movement, whether any country school teacher has any authority to ask his boys not to participate in that movement"—that was to point out that it was brought right into the school. Then again at page 761 Swadeshi was described as a kind of national religion. Then at Question 1872: "What is the meaning of this: 'And to bring about the gradual disappearance of foreign ideas'?—Foreign means those ideas that are not nationalised, and which do not conduce towards nationality. That is all it means. (Sir Edward Carson): Then it goes on: 'The question of Swadeshi now no longer remains a question of argument.' To the question: 'Why are you Swadeshi?' must be given the straight answer 'Because we are born in this country.' Just as there is no reason as to why we speak Mahratti, so also there is no reason that can be assigned for the use of Swadeshi articles. Now the circumstances are such that to cast aside the vow for the use of Swadeshi things would mean death." That, you see, was the penalty for breach of the Swadeshi vow. There was

considerable cross-examination then about that, and then he is asked about Vijapurkar, which I will take later on.

Then, Gentlemen, you will find a very important passage as regards this. I have now got down to January 1907. You remember what was put forward as the case that happened at the marriage ceremony: "If, on the holy auspicious occasions like marriages, we allow this inauspicious and ill-boding plunder by foreign goods to go on, then how can the bride and the bridegroom who are to be married be happy! If a marriage ceremony means the swarming of inauspicious and ruinous foreign articles, then what wonder is there if within a very few days of the celebration of marriages, such events as the death of the husband in some cases and the death of the wife in others should occur?" Then at page 810, he goes further into the Swadeshi movement: "The Swadeshi movement has now met with the full approval of all thoughtful persons in the country, to act contrary to the principle of Swadeshi during marriage ceremonies is tantamount to voluntarily inviting and taking upon one's own head the curses of all learned, working, responsible and thoughtful saintly persons in the country. In the auspicious ceremonies such as marriages to violate the vow of the nation regarding the use of Swadeshi articles means precisely to create an ill-omen to the new Mangal-sutra"—that is the marriage string. "Foreign cloth, foreign sugar, and foreign unnecessary articles of luxury ought first to be dismissed from auspicious ceremonies. It is desirable that Chudas"—that is the bracelets—"of the newly-married bride should last for ever, therefore no wise man will like that the sin of delivering over the hands of our women into the hands of foreign goods should be incurred in marriages at least by putting foreign bangles round the wrists of the bridegroom's mother. When the bride and the bridegroom and their friends and relations should have accepted the Swadeshi vow in marriage ceremonies in this manner, then for the sake of the completion of the said vow in all its details, it is necessary that the money presents given at feasts should go to the 'Paisa Fund.'" You remember I showed you that the "Paisa Fund" was the fund for propaganda,

and that one of the methods of compelling them was by what we call the lash, and by bringing it into Swadeshi and making it part of the essential feature of the Swadeshi vow you should contribute to that fund. On the same page, just to remind you, there is an account given of an attack by some boys upon anti-Swadeshi shopkeepers, where a large quantity of Liverpool salt was thrown away, and they burnt *belati* cloths of considerable value, and the inmates were assaulted because they would not give up selling them in spite of their earnest appeal.

Gentlemen, the last observation which I have to make as regards the Swadeshi is to remind you of the shutting up of the schools by the Government. I do not think I need read it again. That involved Bijapurkar, Mr. Tilak and Paranjpe, who you remember had gone about the country collecting money to create these national schools, and this school at Talegaon had to be shut up because the Government held that it was a danger to the public peace on account of the doctrines that were inculcated there. Gentlemen, we have had some evidence given that was read out to you yesterday, and it is not necessary that I should go through it now, which shows you what the nature of that school was.

(Adjourned for a short time.)

Sir EDWARD CARSON: Gentlemen of the Jury, I am coming down now to the second trial, or near the second trial, of Mr. Tilak, but before I come to that I think it is right to refer you to an article about which I cross-examined him, and an article on the 17th September, 1907, and I do so for this reason—that you will remember the commencement of the articles for which Mr. Tilak was prosecuted the second time, what I will call for shortness the bomb articles, arose in consequence of an attempt to assassinate a Mr. Kingsford, who was Chief Presidency Magistrate in Bengal. You will find in this article an attack upon him, amongst others, and it is a very remarkable thing in this case, so far as we have to travel over the matter—and you will bear it in mind with reference to Mr. Tilak's statement, that he drew a distinction, I do not think it was always carried out on the evidence, between the British Government and the British Government officials—that the three outrages which we

have in this case were outrages upon officials, one on Mr. Rand, an attempt at one, which failed, upon Mr. Kingsford, but led to the death of three other people, and then the outrage upon Mr. Jackson which resulted in his death. Gentlemen, this article which I am going to refer to is headed in the "Kesari": "Well done, Bengali brothers, well done!" and he praises the Bengal people for the courage which they have unexpectedly shewn in resisting the law. He says: "However the current of time has now so changed that just as Ravan"—he was a demon king—"had at last to suffer defeat at the hands of a weak human being whom he had regarded with contempt, even so those very old and young people of Bengal regarded by Macaulay with contempt, had been instrumental in making the obstinate and haughty official class in India, yield. This establishes one fact, namely, that when the time comes, by the grace of God, even the weak people are inclined to set themselves against the headstrong or tyrannical rulers, and determination and unprecedented firmness of mind being added to the same, truth, justice and independence eventually succeed. The present agitation affords some explanation as to why the great sage Valmiki placed before us the encouraging Puranic instance of monkeys striking the demons down." I asked Mr. Tilak whether he ever had described the rulers of India as the demons, and he said not, but there it is, and it is perfectly plain. "The leaders of the new party in Bengal have with great courage secured the credit of bringing it to the notice of the world how greatly firmness of mind, devotion to truth, self-sacrifice, and other moral qualities indeed, more than physical strength or rifles and guns, are essential in the fierce fight which there seems a chance of taking place, between the white officials in India and the poor subjects trampled under foot by them, for the acquisition of the rights of Swarajya, independence or nationalism." You see there a translation really of what Swaraj means. "For that we heartily congratulate them. Like Bengal, the Punjab also is at present overtaken by a calamity, but it must be said that the Punjabis, who are many times physically superior to the Bengali people, have failed to maintain a sufficiently firm and dignified

conduct even though there was an occasion for them to display the virtues possessed by them, as Babu Bipin Chandra Pal, Babu Ashwinikumar Datt or the student Sushilkumar or Babu Surendranath did. Both Pindidas and Dinanath, of ages under 25 years, who patiently heard the order of sentence of rigorous imprisonment for five years each, and with smiling countenance went to jail, deserve praise for the same, but the reputation of the Punjab has become marred owing to the proclamation of their loyalty to the sovereign, which the whole body of the leaders in the Punjab issued." You remember I cross-examined Mr. Tilak about that, just as in the case of the native princes who dared to go ten years before over to the celebrations of the Diamond Jubilee here; so there you see he attacks those who dared to issue a proclamation of their loyalty to the Crown. Now I am not going to read the whole of this through, but there are doctrines laid down in it which I think have a material bearing upon the subsequent conspiracies that were found out in this case: "That being so, what is wrong in saying 'Do what you like, I am not going to give evidence in this case.'" That, you may remember, had reference to a gentleman who refused to give evidence: "All should render help in a matter of justice. It is the duty of every citizen to do so. This principle of Law is right. It has been accepted also in ancient times by Manu and others; but in cases where unjust directions have to be carried out in the name of law, there cannot, speaking from point of view of religion or from point of view of morality, exist an obligation requiring that those directions must be carried out." That means that every man is to judge for himself: "This indeed is the secret of the proposition laid down by the religious scriptures, namely, that even speaking the truth is at times contrary to religion. If Bipin Babu had in the present case given such answer on oath before the Court, we do not think he would have incurred sin, because he had no self-interest to serve thereby; but a better course still was indeed not to give evidence in such cases, and we cannot sufficiently praise Bipin Babu." That is just the same as in murder,

as I pointed out before, if you commit the crime for personal object it is not murder, so, when presented as a witness before a Court, if in your judgment not speaking the truth is not contrary to religion, that is all right. These are the doctrines which he lays down here: "Looking at the matter, however, from public point of view, we must say that in passing upon Bipin Babu the full term"—then he abuses the magistrate and the officials. Then he goes on: "The Presidency Magistrate, that is Mr. Kingsford, before whom the Vande Mataram case is going on could have, within his own powers, sentenced Bipin Babu to a fine of Rs. 200, or to simple imprisonment for one month, but he having thought that this punishmet would be inadequate made a case against Bipin Babu under the Indian Penal Code and sent him to another magistrate, and this other magistrate in his capacity of a slave, fulfilled the desire of Mr. Kingsford. When one sees this disgracing of the goddess of justice taking place during the British rule, one cannot but have one's hair stand on end through surprise and pain." Gentlemen, that is the Mr. Kingsford who shortly afterwards they tried to murder by the bomb, which eventuated in the murder of Mrs. and Miss Kennedy. I leave that to your consideration.

I am coming on now to the articles for which he was prosecuted. There is an article in September, 1907, in which he says: "Even the newspapers in England itself have several times loudly complained to the above effect against the zulum practised in Russia and have drawn the Russian officials into the category of exceedingly tyrannical and wild animals, but now such a state of things has come about that the newspapers in England, instead of making a clamour against the fact of the Indian Government becoming more tyrannical and wild even than the Russian Government during the administration of the learned Mr. Morley, will only admire it." I might refer you to many passages in which they compare the Government out there as being worse than the Government of Russia. Then he says later: "There is no such thing or oppression whatever as the Indian Government would not put into force in order that the power of the white official clsss here might

remain uncontrolled. If the Government has no authority in that behalf under the present laws it will make new laws, but the Government has formed a determination not to fail to harass the people who demand rights of Swarajya, be it even by following a course of injustice or oppression." "The mind of any thoughtful person whatever cannot fail to be seized with an apprehension as to the future state of the English Empire, on seeing that philosophy, high ideas, or state administration beneficial to the subjects—all these things have now been pushed away and that the scale of oppression and injustice has risen up." I pass on many articles, and come on to the time after the murder of Mrs. and Miss Kennedy, which was on the 30th April, 1908, and I read a part of the first article as showing you that he thoroughly understood what had happened. Having given a description of the murder of these women, he says: "This is the first bomb outrage in India, and it is but quite natural that the whole European society and the Indian society should be shocked by it." Then he goes on: "Muzaffurpur"—that is the place where the bomb was thrown—" is situated in the province of Behar and is the chief place in the northern part of the Ganges. Although the town of Muzaffurpur is not much known in India it will be known now throughout the country as the place of the first bomb outrage. After this tragedy had happened at Muzaffurpur the Calcutta police arrested at Calcutta about 20 persons who had come there from the province of the Eastern Bengal and sojourned there. During the night of Friday the Calcutta European police kept a guard on particular eight houses and took a search of them, paying a surprise visit. During the search which was taken at this time there were found several bombs and materials which are used in making bombs, such as picric acid." I am reading this to show you when he wrote the subsequent articles he was fully acquainted with what the people were trying to do: "They can keep these bombs concealed in smallest things." Then he says later on: "It appears from the tragedy of Muzaffurpur that the Bengalis have thoroughly learnt the art of bomb making. As the chemicals which are required in

the manufacture of bombs are those which are used in the colour works or which must necessarily be found in any chemist's shop, the police say that these bombs could be prepared with a little labour and with a small capital." I submit to you that is a most dangerous matter to be informing, at that particular moment, the people about. "A representative of one of the Calcutta Anglo-Indian dailies had an interview with one of the big police officers at Calcutta, during which he was asked his opinion about the matter. The said police officer stated it as his opinion that as the members of the present Secret Society are arrested, the making of bombs may cease for a time, but that it was impossible to stop that business totally. As these formidable projectiles can be prepared with a little technical knowledge, with a small imagination, with a few materials, and with a little money, it is impossible for the police to make these factories of bombs extinct."

Gentlemen, I come to the first article in its chronological order on the 12th May, 1908, which was given in as an exhibit in the trial of Mr. Tilak: "Since the commence. ment of the bomb affair, all the Anglo-Indian newspapers have been incessantly advising Government as to what should be done, if such calamities are to be averted in future. The "Englishman" of Calcutta and the "Bombay Times" and other newspapers have imputed the whole blame to political agitation. The "Statesman" newspaper of Calcutta being controlled by the missionaries was not, so long, much opposed to political agitation. But this paper has now given out its opinion that since terrible occurrences of bomb outrages spring from the Swadeshi boycott agitations this agitation should be stopped." I put my views before you as to the Swadeshi matters before, and that is certainly, you see, the view of some of the papers there: "The Swadeshi agitation gives rise to bomb outrages, and the Bengal Partition gives rise to the Swadeshi agitation; then why not first cancel the Bengal Partition itself?" That means that rather than have a bomb outrage, though you think the Bengal Partition is a right act of administration, at the dictation of the bomb thrower, you ought to cancel it and then you will help to get rid of the Swadeshi movement. Then

there is an article headed: "A Double Hint," where he discusses the whole matter of the bombs: "We, too, consider it reprehensible that anyone, for any reason, should take the life of another by bombs or by any other means. Not only has it no sanction of the code of morality, but also no one else, just like ourselves, considers that if some white officers were murdered in this manner, we would thereby at once obtain swarajya. We have already stated in our last issue that such is not the belief even of the young persons themselves, who threw the bombs. In short, no one will fail to disapprove of taking the life of anyone belonging to the official class by means of a bomb; and if anyone were to express his disapproval to that extent, there is also nothing improper in it." You will find many cases in which he lays down similar propositions of that kind, and then always come to "but." "But the admission that these horrible deeds are caused by the writings or lectures of some political agitators, which some people from amongst us, whilst expressing such disapproval, have now begun to make, is wrong and suicidal in the extreme; and it is our duty to tell this not only to these persons but also to the rulers themselves. Anglo-Indian people or journalists are, at this time, absolutely in need of such an admission from us. Though it may be a fact that the people's heads are turned by the vexation caused by the unrestrained and irresponsible official class in India, it is desirable for the Anglo-Indians to distort it, for their own interest; and, therefore, they have spread a false report that it is not owing to the bad acts of white officers but owing to the writings and speeches of those who without any reason make severe comments on the said officers, that the exasperation of the people has reached the stage of bomb-throwing." There you see the Indian papers are saying it is writings like this that are allowed which lead to these bomb outrages; he says not at all, you have an unrestrained and irresponsible official class in India. It is all their misdoings which lead to it, and we can go along and denounce these people who hold them up if we please, and if anything happens, we are entitled to say it is not our fault. Then skipping over a good deal he says: "It is true that this is the first time that this method of

Russian excesses has come to India; but inasmuch as the history of political revolutions in Russia, Germany, France, Ireland and other places is daily coming before our eyes, how is it possible that not even one or two persons in this country should not have a mind to imitate it?" If anything would help them to imitate it, it would be writings of Mr. Tilak: "In short, history bears open witness to the fact that in any country where an irresponsible and unrestrained official class—be it native or alien—exercises authority over the subjects without any control, the subjects of that country are sure to be always discontented; and that, if the prayer or demand of the said subjects be overbearingly rejected many times, one or two of them at least are sure to become heedless and feel inclined occasionally at any rate to commit excesses." Here is another style which is worth looking at: "We do not at all say that the person committing the excess should not be punished"—it is very kind of them to say that a man throwing a bomb and killing three people should not be punished—" or that his excess should not be repudiated. Whether the matter be social or political, an excess is only an excess; and whatever be the primary cause making men to feel inclined to commit the said excess, the said excess must certainly be punished with the sentence prescribed by law. But to bear in mind that such excesses are unavoidable in some cases and to take a proper lesson from them is itself a mark of true statesmanship; and we hope that our Government will consider the dreadful bomb affair of Calcutta only from such a point of view." That is that they will yield to the bomb-thrower or yield to the views which he holds. "No leader whatever, who is engaged in political agitation, need be told afresh that Swarajya cannot be secured by means of a bomb. The bomb affair of Calcutta is a disquieting but acute symptom showing how intolerable the defects in the existing political system are becoming or have become to the people; and as a physician in case a fever patient begins to talk incoherently through delirium without getting frightened by that symptom, takes a warning from it and prescribes a more efficacious medicine for the disease, so the Indian Government should act quietly on the present occasion. It is of no

use at all to get frightened by the selfish wrath or reasoning of the Anglo-Indian journalists. The political agitation among the subjects is never groundless. The said agitation is, indeed, produced generally in consequence of the defects that might be found to exist in the administration of the country; and we need not tell our Government that to stop all political agitation in the country by means of an oppressive law, because somebody has, in a paroxysm of rage, committed the murder of some official is to produce greater irritation among the people." Then, Gentlemen, there is an article which I am not going to read at length for a reason I will tell you in a moment: "The Real Meaning of the Bomb," where he says: "The bomb exploded owing to the official class having tried the patience of the Bengalis to such a degree that the heads of the Bengali youths became turned"—it is the same thing as the Rand murder over again.

Mr. Justice DARLING: Is this the article called "The Secret of the Bomb."

Sir EDWARD CARSON: No, my Lord, this is "The Real Meaning of the Bomb." It is the next one to it in the book, and it was given in evidence at the trial: "The responsibility of this calamity must therefore be thrown not on political agitation, writings, or speeches, but on the thoughtlessness and the obstinacy of the official class." In point of fact abuse them as much as ever you like, incite against them as much as you like, say what you like about them, but when the fact happens do not blame us who agitate these things and bring about slaughter of people as has happened in these cases. Then it says: "The Bengalis persistently agitated against the partition of Bengal in a constitutional manner; but they did not get redress. Well, it did not matter if there was no redress. Thinking that they would improve their condition by resorting to Swadeshi, boycott, national education,"—his whole policy you see—"and other approved methods of self-reliance, they betook themselves to the path of national regeneration; thereupon some of the authorities caused their own heads to be turned by this patriotism of Bengal"—that is the Swadeshi boycott and national education—"and letting loose some Mussulman knaves"

—he is always making this bad blood against the Mussulman even at this stage—"upon the Bengalis, caused damage to their property and to the honour of their women." That is that the Government purposely let loose a number of Mussulmans on the Bengalis to cause damage to their property and dishonour to their women: "This lesson of taking indirect revenge for going against the inclination of the official class was set by some turn-headed officials to the Bengali youths. As you sow, so you reap. The officials became turn-headed; the Bengali youths also became turn-headed"—that is the officials finding there was Swadeshi boycott, national education and approved methods as he calls them of self-reliance, their method of dealing with that was not in accordance with law, by prosecution or anything else—this is really the story told —but they went and collected a number of Mussulman knaves and instead of proceeding in the Law Courts these high officials of the Government proceeded to let these knaves loose as a punishment to the Bengalis to try and take them away from Swadeshi, boycott and so on, who caused damage to their property and to the honour of their women. Was there ever such a charge before as against any Government? And then it says and it would be quite true if there were any foundation for that: The officials and Bengali youths became turn-headed. Well, unless a pack of madmen one cannot conceive anybody lending themselves to such a matter as this. Then he makes the excuse that: "the officials became turn-headed; the Bengali youths also became turn-headed. On the occasion of the Comilla and other riots, some of the authorities resorted to a path of violence partaking of the nature of gratification of private grudge, thrashing the Bengalis indirectly by secretly taking advantage of private or religious feuds and overawing them by means of terrorising and the Bengali youths also adopted that very path of violence." Was there ever a more scandalous charge? Really if you compare the case of Rand it is on exactly the same line. He actually says there that these officials—and mind you this was within a few months after the attempt to murder Mr. Kingsford, the

magistrate—these officials when there was some row of a religious nature between Bengali youths and somebody else whoever it might be took advantage of it, "partaking of the nature of private grudge, thrashing the Bengalis indirectly by secretly taking advantage of private or religious feuds and overawing them by means of terrorising, and the Bengali youths also adopted that very path of violence. The action of both is of the same nature, and both are equally guilty"—that is the officials and the people who do commit these outrages are exactly to be upon a par. "Calm and thoughtful philosophers will weigh both in the same scale, and put the same value upon both. When Agya Vetal moves abroad, bombs are bound to explode in rear and in front; this is the settled course of nature." Agya Vetal there of course means the British Government from the context before. When it moves abroad with all its horrible crimes, "bombs are bound to explode in rear and front; this is the settled course of nature." "The Real Meaning of the Bomb" he calls it there. Then he says: "If Government leaves all bounds, as suggested by the Honourable Mr. Rees, then the consequence thereof shall never be beneficial to Government and to India. Even if bombs can be prepared with a little knowledge, at a small cost and with small effort, still there is not much danger from them at present to the official class. The bomb is not as dreadful in India as it is in Europe; the reason of this is stated by the Bombay "Advocate" to be that even though some turn-headed people ready to prepare bombs are found, still there being the police and other people anxious to give information about such turn-headed persons to the authorities, secret bomb societies cannot fail to be immediately brought to light in India like the one of Calcutta." I will not read it through at any greater length for a reason that I will tell you in a moment.

Then, Gentlemen, comes the article to which my Lord referred a few moments ago: "The Secret of Bomb" which is at page 1073. I think, Gentlemen, as I said in my opening it is one of the most horrible writings that have ever been written. I read it to you in my opening, and you will be perhaps glad to hear I am

not going to read it again. I am sure if you want to refresh your memory about it you will look at it, but I will remind you it is the one in which the commencement is a comparison between Chapekar and the man who threw the bomb as to who ought to have the highest honour for the murder that he committed. It says: "Considering the matter from the point of view of daring and skill in execution the Chapekar brothers take a higher rank than the members of the bomb party in Bengal"—because they had gone up to their man and shot him and the others had thrown a bomb which had killed three people. "Considering the end and means, the Bengalis must be given the greater commendation." That is, having invented the bomb they have brought about the first bomb outrage in India, that is going to wreck the official classes. "Neither the Chapekar nor the Bengali bomb-throwers committed murders for retaliating the oppression practised upon themselves; hatred between individuals or private quarrels and disputes were not the cause of these murders. These murders have assumed a different aspect from ordinary murders, owing to the supposition on the part of the perpetrators that they were doing a sort of beneficent act. Even though the causes inspiring the commission of these murders be out of the common, the causes of the Bengali bomb are particularly subtle. In the year 1897 the Poonaites were subjected to great oppression at the time of the plague, and the exasperation produced by that oppression had not exclusively a political aspect." Gentlemen, who brought about the exasperation? Mr. Tilak himself; at least, he helped to do so. Gentlemen, really for a man to come to a British Court of justice seeking damages because his writings were said to have conduced to murder, with this record behind him of apology for murder on every occasion, of his ethical distinctions as regards the various grades of murder, is really almost insulting to one's intelligence. He says in this article many things which I daresay you will remember. For instance he says: "Mr. Rand's murder brought this mistake to the notice of the Government; and after plague riots occurred everywhere subsequently Government did not also hesitate to openly admit the mistake."

Even if it did relate to apologies for murder, of course it is not true but there is what he says, the meaning of that to the ordinary Hindu or Brahmin or whoever it would be who would read this is: If you have a grievance, if you think there is a mistake going on, let us have a murder that at all events will have one effect, that it will bring it to the notice of the Government. I read this to you, word for word, when I was speaking before, and I am not going to read it to you any further. There is one other article that was given in evidence at his trial, which is at page 1087, which he commences by saying: "English rule is openly an alien rule. Well that, too, has not been carried on like Mogul rule, by the rulers mixing with Indian society; and they are going to carry it on always as strangers indeed. Moreover, they are not satisfied even with keeping only the ruling power in their hands; but they want also to seize possession of the trade and industries of this country forcibly and unjustly or to ruin them. Well, even after doing so much, they should at least have kept the burden of taxation on the people light; but the very reverse of it is seen to be the case! In short, Swarajya albeit of the old type, is gone, trade has been ruined, industries have collapsed, glory has come to an end, wealth has departed, ability has disappeared, and courage has failed." I am tempted, of course, to read a great deal more, but I am not going to now, and for this reason, that all that was brought before the Court on a trial in 1908, June 1908, and, Gentlemen, I say this with confidence to you: After that trial in which this gentleman, Mr. Tilak, was found guilty, and after the statement of the Judge in sentencing him, I say it is impossible for Mr. Tilak to get a verdict in this Court with that record against him there. Here is what the Judge said, I will read it for the last time: "It seems to me that it must be a diseased mind"—that is Mr. Tilak—"a most perverted mind, that could say that the articles which you have written are legitimate weapons in political agitations. They are seething with sedition; they preach violence"—that is what we say, that is the whole thing that Sir Valentine Chirol has said, that they preach violence and that violence ensued—"they speak of murders with

approval"—if he is found guilty of speaking of murders with approval, what is the case here?—"and the cowardly and atrocious act of committing murders with bombs not only seem to meet with your approval, but you hail the advent of the bomb in India as if something had come to India for its good. As I said, it can only be a diseased and perverted mind that can think that bombs are legitimate instruments in political agitations. And it would be a diseased mind that could ever have thought that the articles you wrote were articles that could have been legitimately written. Your hatred of the ruling class has not disappeared during these ten years, and these articles, deliberately and defiantly written week by week, not, as you say, on the spur of the moment, but a fortnight after that cruel and cowardly outrage had been committed upon two innocent English women. You wrote about bombs as if they were legitimate instruments in political agitations. Such journalism is a curse to the country."

Mr. Justice DARLING: Is that when he was sentenced to six years' transportation?

Sir EDWARD CARSON: Yes, my Lord. The Judge goes into the question and says: "You are liable to be transported for life." Then he sentences him to imprisonment, and on the third charge a fine of Rs. 1,000.

Mr. Justice DARLING: I want to know whether I have the facts accurately. There was an appeal from that to the High Court?

Sir JOHN SIMON: No, my Lord, no appeal was permitted on any matter of fact, the only appeal was on a purely technical question, or for misjoinder or non-joinder.

Mr. Justice DARLING: And that failed?

Sir JOHN SIMON: That failed.

Mr. Justice DARLING: And he served his sentence?

Sir JOHN SIMON: That is right, my Lord.

Sir EDWARD CARSON: There were applications to the Court and a number of points were put forward. You have a copy of the trial and you will see them at page 73. There was an appeal on the ground of mis-charging the Jury and things of that kind, but eventually,

my Lord, there was an application to allow an appeal to the Privy Council on certain of the technical points.

Mr. Justice DARLING: It comes to this, Sir John, whatever the points taken they all of them failed, because he had to serve the sentence at Mandalay.

Sir EDWARD CARSON: I would like to tell your Lordship that one of the points made was that the words charged were not proved, and "your Petitioner did not use the English words charged and he ought therefore to be acquitted." "The learned Judge admitted certain exhibits which were prejudiced and admitted the official translation of an incriminating article." The Court refused the right to appeal to the Privy Council, and of course there it stands.

Sir JOHN SIMON: I agree.

Sir EDWARD CARSON: It stands there at the present moment when he is asking damages. Now, Gentlemen, of course he went then to prison, I believe he was not transported, he was sent to prison at Mandalay.

Mr. Justice DARLING: That does not make any difference.

Sir EDWARD CARSON: I believe it does, my Lord. Mandalay is, I believe, a first-class prison. Gentlemen, Sir John Simon says, and he properly argues it on behalf of his client—I find no fault with his advocacy—that the moment Mr. Tilak goes to gaol, from that moment you ought not to impute anything to him that happens afterwards. That is a very strange theory. He had been sowing all this conspiracy broadcast throughout India all these years, and we are told the moment he goes to gaol no more does the tree of outrage or sedition bear fruit so far as he is concerned. Gentlemen, I differ from that proposal as a most dangerous one to lay down, and I ask you to accept this rather on the contrary, that the moment a man begins to preach and begins to create conspiracies for and to organise for violence and illegality, no jury or no Government can look minutely for or ever find the line you can draw where the fruits of that preaching, conspiracy and organisation stop. That is the danger of it. You may be under some intense excitement or grievance at a

particular moment, but nobody can set the bounds or limitation to violence once it is added—and certainly once it is added persistently and consistently—to such methods as Mr. Tilak employed. We do not say in the book that he did anything personally as regards Mr. Jackson or after he was in gaol, on the contrary, we tell the people that he was removed to Mandalay and we say "the agitation in the Deccan did not die out with Tilak's disappearance, for he left his stamp upon a new generation which he had educated and trained"—those were the boys and the children and the students who were present at these festivals singing those songs of praise of men like Shivaji and their murderous deeds, and these children who were ordered, in order that they might grow up discontented with British rule, to bring together their clothes and see them publicly burnt as bonfires for the glorification of Swadeshi and to the illegality and conspiracy that Swadeshi meant. "More than a year after Tilak had removed to Mandalay, his doctrines bore fruit in the murder of Mr. Jackson, the collector of Nasik—a murder which, in the whole lamentable record of political crimes in India, stands out in many ways pre-eminently infamous and significant." It gives a whole account of the matter. I am not going to read it all to you, but it then goes on to say—and this is what is complained of—"All this opens up wide fields for speculation, but there is one point which a statement solemnly made by the murderer of Mr. Jackson has placed beyond the uncertainties of speculation. In reply to the magistrate who asked him why he committed the murder, Kanhere said: I read of many instances of oppression in the 'Kesari,' the 'Rashtramat,' and the 'Kal,' and other newspapers. I think that by killing Sahibs we people can get justice. I never got injustice myself nor did anyone I know." How like that is to what Chapekar said when he said his house was never molested and he had received no zulum: "I now regret killing Mr. Jackson. I killed a good man causelessly." The writer goes on (and this is complained of): "Can anything be much more eloquent and convincing than the terrible pathos of this confession? The three papers named by Kanhere were

Tilak's organs"; (I will say a word about that in a moment) "it was merely the story of the Poona murders of 1897 over again." Gentlemen, is that a fair criticism or is it not, of what had appeared in the Tilak Press? He does not mean as the book shows that these papers belonged to Mr. Tilak, or were under his control, because at a previous page, and you have to take the whole thing together, he says: "In the Deccan Tilak not only maintained all his old activities, but had extended their field. Besides the 'Kal' edited by another Chitpavan Brahmin and the 'Rashtramat' at Poona, which went to even greater lengths than Tilak's own 'Kesari,' lesser papers obeying his own inspiration had been established in many of the smaller centres." He states there that the "Kal" was edited by another Chitpavan Brahmin, and we know that was Paranjpe; we know therefore when he talks of "the Tilak's Press" he means the Press which was under Tilak's inspiration. Then comes the miserable trial of the murderer of Mr. Jackson, of this wretched boy, this wretched student at Nasik, which had become the centre of all kinds of conspiracies to wage war against the King and to bring about the murder of Mr. Jackson. I believe there were four trials altogether at Nasik. I am not going through again the confession which he made; I daresay his Lordship will refer to it. My learned friend made a point that in the first of his confessions which he made he stated that nobody else was engaged in the matter but himself, and he afterwards gave a long account of the whole thing, and he explained why he said that, and when he afterwards gave a full confession he said the Treasury had burst and it had all become known, so he details all of it. What is it he details? The words mentioned in this book are only a part of it. He gives you the consultations they had and the suggestions made as to whether they ought not to murder Davar, who had been the cause of Mr. Tilak going to gaol; a remarkable commentary on the whole of this and the power that Mr. Tilak possessed. He states how he read the life of Mazzini and the lessons drawn from it in the "Kesari," which I have already referred you to over and over again. I say with confidence I will ask

you to come to the conclusion that, as regards that particular libel, there is really no answer to our plea, or no way of getting out of it in this case ; but that is entirely for you. I am sure you will bear in mind the Judgment which I have read to you and the other proceedings connected with this most miserable matter. You will not leave out of your consideration the connection of Tilak with these men who were sentenced for these conspiracies. It would take me loo long to do what I did in my opening, and what I did in the cross-examination, to go through the various matters connecting Nasik with Poona and Tilak with Savarkar. Enough, at all events, for the present, after the patient hearing you have given to the case, to say this, that here are undisputed facts; Ganesh Savarkar of Nasik and Vinayak Savarkar of Nasik were known to Tilak from 1905 or 1906; he knew them to be, as he called them, hot-headed men, rather prepared to transgress constitutional methods, and he says he warned them. Then nobody knew better than he did what these men were or how they ought to be discouraged. Notwithstanding that, we find that he helps Vinayak Savarkar to get the scholarship which enables him to come to England and from England, at India House, we find Vinayak Savarkar sending out the pistols which murdered Mr. Jackson; we find Savarkar on platforms with this gentleman more than once, we find Savarkar preaching these doctrines of Swaraj and Swadeshi, we find Vinayak Savarkar writing a book with an introduction on the life of Mazzini in England, and sending it out to his brother Ganesh, and he then dedicated it with a dedication which I have already read to you, to this gentleman, Mr. Tilak. Vinayak Savarkar has suffered conviction and transportation for life. Ganesh Savarkar, in the same way, published a volume of poems and these poems are reviewed and praised in the "Kesari." We find him prosecuted for these poems and sentenced to a long term of imprisonment, a life sentence, I believe. Those are the Savarkars, mixed up so much on the platforms of Nasik and elsewhere with the Plaintiff. He says he somewhat knew them. That is over here; that is not what he says at Nasik if he was dealing with the Savarkars. Then we find him

again in constant touch with Paranjpe, also convicted of sedition within about a fortnight of the same time that he was convicted for his articles in relation to the bomb. We find him over and over again with Paranjpe on many occasions and resuming his friendship with him when he comes out of gaol, and, if you like to believe him, not even knowing what Paranjpe had been prosecuted for—his friend of 50 years standing! A strange bit of evidence, whichever way you like to take it, whether he was telling the truth in the box or not. That is the kind of man Tilak is. It did not matter whether it was the vilest crime he could have committed or not, he remained his friend and remains his friend up to the present time. You find him again with a man, Bhat, who was up to the neck in the Nasik conspiracy, also sentenced; you find him on many platforms engaged with Bhat. Is he still a friend?—he is not quite sure, he knows him "somewhat"; is he still in your employment?—he is not quite sure; then he admits that he believes he is. A strange man to have with him before the Commissioner in India to help him to get up this case, and a strange man to be helping to manage his affairs while he is away here in England at the present time, leaving him behind! Bhat was also convicted. Then there is Bijapurkar; he also was convicted of sedition. What a gang they were! Bijapurkar, the man who was employed going round the country collecting money in order that they might teach these doctrines of treason, backed up with Swadeshi, and all the rest of it in the schools, the little children; although they complain of a passage in the book which they say is a libel which says he brought his propaganda into the schools. He was over the school that was closed by the Government Order as having for its object the interference with law and order, and being constantly a danger to the public peace. That is another of his close companions. I am not going through the note about him. Enough to say he was constantly on his platforms, took the chair just before he went to gaol, and just after he came out; gaols made no difference. These are a gang of treasonable conspirators out there who have between them brought about these disasters. This gentleman coming away from them all, and coming to a

place where he is utterly unknown, where the atmosphere is different, and where his history is not understood, comes, as it were, with a clean slate, and with different companions to try and induce you, forsooth, to give him a verdict, and to give him damages in this libel action.

One matter more only I think I have got to refer to, that is one of these passages which is complained of about money subscribed for fear of the lash, which he knew how to apply through the Press. They say that is a blackmailing charge; "to the tepid and recalcitrant, just as his gymnastic societies sometimes resolved themselves into juvenile bands of dacoits to swell the coffers of Swaraj." Of course, "for fear of the lash" means the lash of his pen, it is figurative, it is not that he went out into the market place and whipped his people. He did something far worse; there was nobody from whom he differed that he did not apply the lash to—Rand, Harris, Sandhurst, every one of them. Every Prince that dared to be loyal to this country, every man who dared to come over here for the Durbar; you have seen specimens of what we call the lash. There was Gokhale, whom I spoke of this morning who dared to apologise for lies he told about our soldiers' conduct at the time of the plague, every one of them got the lash. There is one passage which above all others illustrates the truth of that, I am not stopping to read it now, it is a passage in which he says if you break the Swadeshi vow the penalty is death. If at a wedding the bride and bridegroom do not back Swadeshi principles there will be the death of the bride or the bridegroom, and, above all, in the same article if you do not complete your vow by subscribing to my propaganda, the Paisa Fund, and some other fund I forget the name of, which is mentioned here, if you. do not subscribe to these and complete your vow then you have also broken away from Swadeshi. I read to you the objects of it, I read the passionate plea that they should support it for the purpose of what he was pleased to call "education on national principles." Were there no dacoities even in the strict sense? You heard the article read out, of the boys going into the anti-Swadeshi shop, if I may use the term, the shop where they refused to carry out the Swadeshi doctrines. They take the goods

and they burn them and they assault the people. Is that the act of a docoit, is that in the furtherance of the same policy which he was preaching? Then we had yesterday given in evidence the case of Ambdekar and Dandekar and their thefts which they brought and gave to a gentleman who was a member of what he called a Swaraj Society; all these thefts for the same object. The truth of the matter is that it is not in taking a line here or a line there on which you can decide a libel action of this kind. If the libels impugning his writings led, or were calculated to lead, to violence and to such results as the murder of Mr. Rand or Mr. Jackson, what on earth have these, what I may call smaller libels, to do with the case? Would any jury hold him entitled to bring an action if he was guilty of the other matter? I venture to predict such a course would be impossible in the minds of any British jury.

Now, Gentlemen, so far as I am concerned, that is the whole case. It has been a long, weary one for you, that I quite understand; it ought to have been tried, as I suggested before, in India, where all these mystical rites and religions are so much better understood, but the case, long as it is, wearying as it is to you, is one of great public importance. Far be it from me to urge that Mr. Tilak should not receive justice; if he deserves a verdict at your hands give it to him, if it is right, if you think he deserves it. But I am bound to put to you the importance of this case from a public point of view. You are really asked, and that is the object of his coming here, to set him up in India as a man who can continue the course of action which he adopted in his Press, and that he has a right, notwithstanding these decisions of the Judges out there in his cases, to do it with impunity. I need hardly remind you of the far-reaching effects of such a verdict as that on the peace of the Government of India and on the difficulties of the white officials out there who do their duty so well to the country.

I have only one word more to say. My friend, Sir John Simon, produced a letter written after this gentleman, Mr. Tilak, came out of gaol; I refer to it because I think it indicates what kind of man Tilak is. He comes out of gaol in August, 1914, and writes a letter,

I ask you to say, in contemplation of this case, because it refers to what has been stated about him while he was in gaol. Just listen to this and compare it with what had been written in the "Kesari": "It has been well said that British rule is conferring an inestimable benefit on India not only by its civilized methods of administration" —this is the same Mr. Tilak—"but also thereby bringing together the different nationalities and races of India so that a united nation may grow out of it in course of time. I do not believe if we had any other rulers except the liberty-loving British"—the "demons" of a few years ago—"they could have conceived and assisted us in developing such a national ideal. Everyone who has the interest of India at heart is fully alive to this and similar advantages of the British rule; and the present crisis is, in my opinion, a blessing in disguise inasmuch as it has universally evoked our united feelings and sentiments of loyalty to the British Throne." He forgot to add, "God save the King." Gentlemen, I say that was policy, from beginning to end and I will tell you why I say it. The war went on and troubles came to this country. Everyone of you will recollect the state of anxiety throughout the whole Empire last June and last July when the Germans were marching on the Ports and nobody knew from day to day what was going to happen; everybody knows what strenuous efforts were being made all through the Empire to get men to serve, to go out and still further fight our battles, which thank God are now over. What happened then? This loyal man who knew there was nothing like the British Empire to bring home inestimable blessings to him and his people out in the Deccan—we have produced here the orders served upon him in which he was warned that he must not again make a speech; why? Because he had been doing his best to brand as thieves, rogues and knaves, the brave men who enlisted in Bombay and elsewhere, and he had warned them it was no course for them to take to fight for the British Empire. That is Mr. Tilak; that is the gentleman who comes here to ask you for damages. All I can say is, if he gets them and if he is set up—very well, we must, of course, agree he has had British justice; British justice of a most profound

character. All I ask of you before you come to such a conclusion as that is, that you should take into consideration the whole history of this case, from 1893, where I commenced yesterday, down to June of 1918, and say whether this man ever ought to have brought this action in a Court of Justice.

Sir JOHN SIMON: If your Lordship pleases, Gentlemen of the Jury: It is now three weeks ago since you were summoned to try this case, and since I opened this case to you, stating what the questions were which you would have to consider, and sketching the material which you would have before you. Since then, partly because of the length, no doubt the necessary length, of some things, the cross-examination and speeches, and partly owing to the regrettable illness of the Judge, whom we are so glad to see returning here fit and well to complete this case, a long time has passed, and though I am certainly not going to occupy your time for so long as it has been thought necessary by the Defence that it should be occupied, you will, I think, feel that it is only right that I should, as briefly and clearly as I can, and I hope without any heat or passion, call your attention to what this case really is about, and what are the real matters which you have to decide. That is my duty here, practising in these Courts as an advocate. I am grateful to my friend, Sir Edward Carson, that, not once but more than once, in the course of his address to you he has made it quite plain that he understands, as of course all accustomed to the procedure of these Courts understand, what are the limits of my duty in the matter. It is no part of the business of a British advocate to indentify himself with the opinions or the writings or the policy of the client for whom he appears; it is no part of the business of a British Jury before it finds a verdict in favour of the Plaintiff to satisfy themselves that they approve of all that that the Plaintiff has done, and if I may say so with the greatest respect to my Lord, it is no part of course, of the duty of a British Judge to have any part in the trial of a case, and no British Judge ever does, than that of seeing that whatever a man's opinion may be when he brings a case to these Courts, he should be required no doubt just like any other man to prove his

case, and if he proves his case, then he is entitled to the consequences which that proof brings him. It is with that view of my duty, and that view of your duty, that I am going to say one or two words to you about what the question in this case really is. Really, in order to make this plain, I think I had better begin by telling you five or six things which are not the questions in this case, for we have heard a good deal about them, and it will save, I trust, a certain amount of time and possibly avoid a certain amount of confusion if I begin by pointing out to you some of the things which are not the questions which have to be decided in this case. In the first place it certainly is not a question which has to be decided in this case whether the Plaintiff is a person who has time and again published seditious writings in newspapers. He has been convicted of it twice. You will do me the justice of remembering that so far from attempting to gloze over or hide that fact when I opened this case, I not only told you so, but I read to you, I will not say everyone, but a large number of the articles which had formed the basis of those charges. That is not the question. Neither is it the least in the world the question in this case whether the strong, violent, unrestrained criticism which is to be found in the pages of the "Kesari" and the "Mahratta" of British administration, whether civil or military, is justified. That is not the question in this case. It will often happen that a Jury will find it its duty, trying to do right between the parties, and considering the question that has really got to be decided, to give a verdict in favour of somebody whose opinions they abhor, whose methods they detest, and as to whom they are perfectly satisfied that he is a seditious and an undesirable citizen. About that you and I and everybody in this case, each of us may have our own opinion; but that is not the question in this case. Neither, Gentlemen, is the question in this case whether Mr. Tilak had the acquaintance, and it may be the friendship, of, let us say, Mr. Paranjpe, or some others who have been mentioned, with these native names, in the course of the Inquiry. There is a special reason why that should not be the question in this case, and it is this: my friend, Sir Edward Carson, just now ended an

impassioned section of his speech by giving you a large number of names and saying that they were all engaged in a conspiracy. It is very necessary for you to realise that whatever be the defence set up here in this case in the attempt to justify what has been written, no defence has been set up that there was a wide conspiracy of all these people in India. It would be what is contrary to the law and wholly contrary to that spirit of fair play which, of course, you desire to see actuating your own decision, if you were to allow suggestions of that sort, made at this late stage, to influence your decision. Neither is it the least in the world the question in this case whether Shivaji, this seventeenth century hero, was a treacherous person when he killed Afzulkhan, or whether on the other hand he is a person who in the light of history might be justified in what he did. Neither is it the question in this case whether Professor Gokhale should have apologised, or whether when he apologised his apology was unnecessarily abject, or whether it exposed him, justly or unjustly, to the criticism of some other persons. I could go on giving you a long list which I have been noting down during the period of Sir Edward Carson's speech, and none of these matters are the question.

The question is this: here is a book written by a distinguished gentleman, Sir Valentine Chirol, published by Macmillian & Co., on the subject of "Indian Unrest." For all I know it may contain a great many things which are both true and valuable to know, but if that book contains in six separate places defamatory statements about this Plaintiff, then this Plaintiff is entitled, and Gentlemen, he is entitled to come to the central city of the Empire, he is entitled to come here and to say: Those things which you have said of me in this book are not true, they are defamatory of me, and I bring this action and claim my right to a verdict unless you make out the defence which you set up. I was very much astonished just now to hear my friend, if I caught him rightly, advance to you this proposition, that in view of the very strong terms in which Mr. Tilak had been sentenced by that Parsee Judge in the year 1909, it was impossible for Mr. Tilak to get a verdict at this trial. I

wish to put this to you most gravely. If you, Gentlemen, accept that proposition, either in terms or in spirit, then with the greatest respect to you you are not addressing your minds to the real task which you have to discharge. Let us assume that the Plaintiff here is a seditious person proved to be guilty of sedition once, proved to have been guilty of sedition twice, condemned in very strong terms, but justly condemned, by a righteous Judge; it is no part of the law which we administer here, it is no part of the justice which you will see, I am sure, Mr. Tilak gets, that you should say: Very well, if he deserved those things which were said about him by the Judge in 1909, when he was convicted of sedition, Sir Valentine Chirol may call him a blackmailer, may call him a common cheat, may call him a murderer, may call him anything he pleases. The very first thing you, Gentlemen, have to do is to see what are the things in this book which Mr. Tilak says have been written and published which defame him, and to ask yourselves about each one in turn. Now what is the justification for saying that? The question you have to ask yourselves is not, would there be abundant justification for saying a number of other things? I should think a Plaintiff with Mr. Tilak's record in the Criminal Courts of India, who came here and complained because Sir Valentine Chirol wrote of him that he was a grossly seditious person, would have very short shift at your hands; but he is not coming here to complain of that. You will remember that, my Lord, when the Plaintiff was in the box, when I think I myself had been just asking him the question, what he complained of, my Lord put his finger on this exact point, and, as often happens, got the clear answer which saves the Jury so much trouble. He asked him in express terms: Do you complain of it being said of you that you were guilty of sedition; and Mr. Tilak said: No. So let us get that out of the way. The question therefore comes to be this; here are six separate things said in this book; nobody can dispute that they are very defamatory, that they are very injurious; are they true? Or to put it more accurately, here are six separate things said in this book; the Defendants have undertaken to prove to you that so far as these statements are matter

of fact they are true; have they proved it? I am going without any great consumption of time to point out to you how plain it is, as regards some of these matters, at any rate, that they have not; and I am going to submit to you about the rest, that about the rest also it would be true to say that they have not been proved. Then they in the second place say, we have only been indulging in fair comment. It is not for me to instruct you in the law; I will only make this observation in passing on this subject, that the law very often contains much more good sense than some people suppose, and the law on the subject of fair comment is this. In the first place, it is no good coming forward and saying, the statements that I have written down in my book are fair comment. Comment is not a matter of stating facts, it is a matter of opinion expressd on facts, and the first thing to find out is, are the facts right. No doubt if the facts are right, then, and then only, the question arises as to whether the comment is fair. I go further in this case, and while some words of my friend Sir Edward Carson may still be ringing in your ears, I would like to go straight to what has been the principal burden and emphasis of my friend's address. I am certainly not prepared to treat the other libels in this book as trumpery matters. It cannot be a trumpery matter to say of a journalist, if it is untrue, that he applies in his newspapers the lash by means of which he extorts subscriptions from the unwilling. Sir Valentine Chirol will excuse me if I remind him that he also is a journalist, no doubt a very distinguished one, and I should be greatly surprised if Sir Valentine Chirol regarded it as a trumpery matter if anyone were to say that in a writing in the great newspaper to which he contributes he had extorted subscriptions by applying the lash. It is not a trumpery matter at all; we will see in a bit whether it is true. Neither do I for a moment admit that it is a trumpery matter to say of a trustee that his conduct is such that it shows that he is not a man of even common honesty, I am afraid I am so constituted, and I hope you are so constituted, that I cannot regard statements like that as merely the fringe of the case about which it is hardly worth while to trouble. Let me put this aside for a moment and let me

go to these two matters which naturally and properly have taken so prominent a part in the trial, what I may call the Rand libel and the Jackson libel, and let me ask you now, who have been following this case so patiently these many days, does not it strike you that Sir Edward Carson's exhaustive speech on the part of the defence here has very strangely omitted any reference at all to some very material matters which one would have thought he, at any rate, would have commented on? Just consider what are the elements of what I may call the Rand case, apart from the matter of this series of articles, which are undoubtedly of great importance in connection with the case, and which Sir Edward Carson has been reading to you so elaborately. Here are the essential elements of the case; form your judgment upon these elements, and ask yourselves how far I am justified in emphasising them. This distinguished official, Mr. Rand, was murdered, foully murdered, by a stroke delivered on Jubilee night, 1897, that is to say, on the 22nd June of that year. Within a month Mr. Tilak, who, according to Sir Valentine Chirol, is the real murderer—that is the language in his book: "Was not Tilak rather than Kanhere the real author of the murder? It was merely the story of the Poona murders of 1897 over again"—the Poona murder is the murder of Rand and Ayerst, I say within a month Mr. Tilak was in the clutches of the Criminal law at Poona, prosecuted by the Advocate General of the Province, tried by a Judge sitting in that place; these very articles which Sir Edward Carson has been going through with you hour after hour had then been published only, some of them, a very short time, they were published in the very place where this dreadful tragedy had been committed. The authorities had the best of all means of knowing how far those articles might fairly be regarded as the cause of, or contributing to, this ghastly murder and they put Mr. Tilak on his trial almost before the grave of Mr. Rand was filled, not on any charge of incitement to murder, not on any charge connected with murder, but on the charge that he was a seditious person who had written articles that were calculated to cause disaffection to the Government, disaffection being defined by the

terms of the Statute. That is a very striking fact. I should have thought that anybody representing Sir Valentine Chirol would have felt that he had got to deal with that somehow. Here we are in the year 1919; surely the very first thing that faces you when you ask the question "Is Mr. Tilak really the person who is the real murderer, the person who really incited the murder of this man Rand, by his writing," the first thing that would be expected would be, "surely at least he was prosecuted for inciting to murder." Not a bit. Not only so, but as Sir Valentine Chirol frankly admitted to me in the witness box, the Advocate General for the Prosecution, the Judge trying the case, both of them pointedly and expressly disclaimed the suggestion that Mr. Tilak had that responsibility resting upon his conduct.

Gentlemen, it is all very fine to talk about the inconvenience of these matters being tried here in London, instead of being tried there. Mr. Tilak was tried there within a month or two of this dreadful thing happening. He was tried there by the very Government whom Mr. Rand was serving, and he was tried there in the very place where his papers were circulating. The first thing I ask you to notice is a matter about which Sir Edward Carson thought it better to say nothing at all. Within a very short time of Mr. Rand being struck down, which was the very moment when you would have expected any such imputations to be made, it was astonishingly withdrawn. The second point is that Lord Sandhurst, the distinguished public servant at that time was the Governor of Bombay. From when? From 1895 he was the head of the Government, at the very time when these articles which Sir Edward Carson relies upon to prove his point about Mr. Rand were appearing in the Press. 1895 is the very year Lord Sandhurst was there, and you will remember, I asked Lord Sandhurst this question. I asked him whether or not Mr. Tilak had not been a member of the Legislative Council of Bombay. The Legislative Council is not, like the House of Commons, elected on a wide franchise, but it consists of a number of persons, some of them natives, who are nominated and chosen, some of them by different municipalities, but before they can go on the Legislative Council, the

Governor has to approve their appointment. He has the right to say: "No, that kind of man is not the kind of man who would be helpful on the Legislative Council." I asked Lord Sandhurst whether Mr. Tilak's name did not come before him as the head of the Government in June 1897, which is the very month in which Mr. Rand was murdered, and this is what Lord Sandhurst said about it. This is page 379 of the Shorthand Notes. What I asked him was this: "Mr. Tilak, I think—I see it by the documents here—not only was a member of the Legislative Council of Bombay, but he was recommended in the course of your time for a further term—it was in June, 1897?—I am not very clear about that, but he was, at any rate, a member of the Legislative Council. Q. What I wanted to remind you of was this, and I daresay your memory will serve you when I remind you that in June, 1897, Mr. Tilak, who was re-elected as a member by the local Board, was then elected or confirmed by yourself in that position?" and Lord Sandurst says: "Yes. That was after that election. Q. In June, 1897. I think the confirmation follows a month or two later. Would that be the ordinary practice?"—Lord Sandhurst does not quite agree about that, and his answer is: "I should not like to charge my memory by that, but I should think it must have been almost at once after the election." So that the second fact you have staring you in the face is that the Government of Bombay with Lord Sandhurst at its head after this series and stream of articles had been poured out from the "Kesari" printing Press, and when they were culminating in the article upon which Mr. Tilak was prosecuted, accepted Mr. Tilak and confirmed him as what—not as a person who was inciting to murder, but as a person who was a proper selection for the Legislative Assemly of that great Presidency.

Mr. Justice DARLING: Can you give me the date, Sir John? How soon after his confirmation by Lord Sandhurst was he arrested for sedition?

Sir JOHN SIMON: It was in the following month, my lord. The exact date is not given.

Mr. Justice DARLING: Could you tell me, when he was charged with sedition, was there read at the trial any

article which appeared in the "Kesari" before he was confirmed as a member of the Council?

Sir JOHN SIMON: Yes, my Lord. Gentlemen, my Lord has made plainer to me what I should like to make plain to you. The fact is that the very articles on which he was prosecuted, or at any rate some of them, were articles which had appeared before he was confirmed in his position as a member of the Legislative Council, and my point to you is this: is it not a very odd thing that it should be reserved for the year 1919 to find out that all the time the Government of Bombay were quite wrong, and that they never ought to have taken Mr. Tilak into the Legislative Council? He is the real author of the murder of Mr. Rand, and not only so, but he has been writing a series of articles which the Defence suggests to you would show any reasonable person who studied them that that was the direction in which he was leading his fellow Council men. Then, Gentlemen, there is a third thing which is quite surprising. You will remember that when Mr. Tilak was giving evidence he was challenged by Sir Edward Carson in respect of some article that was then being read in this way: "The 'Times of India' said that about you. Did you ever take proceedings against them?" I am sure, very much to the astonishment and not a little to the discomfiture of the Defendant, Mr. Tilak said "Yes," and he was promptly challenged by my learned friend: "Now where is it?" and for the moment it could not be found, but it was found without any difficulty as soon as we began to turn over to the proper pages, and one found that this was the fact.

Gentlemen, do observe the importance of this when you are deciding whether Sir Valentine Chirol has proved his justification here. It proved that the "Times of India," which claims to be the leading paper of the whole of India, a great Anglo-Indian journal, had inserted in its columns in November, 1899, which at any rate is an interesting date, because it happens to be 20 years before the present, an extract which had been telegraphed to them from London, and which they were responsible for, in which they said of this Mr. Tilak that he had directed if he had not organised a campaign of murder in which

they said he was an arch-plotter, and that since he was imprisoned sedition is merely in temporary abeyance.

Then: "It rests with the new Governor to complete its extermination by such rigorous measures as the occasion may demand; neither Bombay nor any other portion of India can be allowed to form a nucleus for disaffection, disloyalty, treason and assassination. Happily, Sir Stafford Northcote goes to his important office with much fuller knowledge of the state of affairs than his predecessor possessed until his mind was informed by the campaign of murder which Tilak directed, if he was not its organiser. The new Governor knows beforehand that the Brahmins in particular are never to be trusted, let them speak as smoothly as they may. Many of these high caste men still dream of restoring Mahratta supremacy; they believe, not without reason, that but for the coming of the British Raj, that formidable power would have dominated the whole of India, carrying (restoring) with it the supremacy of Hinduism over all other religions." It is very fine to come here at this time of day and make it a portion of your speech that Mr. Tilak has come here to London where Sir Valentine Chirol and Messrs. Macmillan are naturally to be found. It is all very fine to do that, but what did Mr. Tilak do? When that was written about him by the "Times of India" in the year 1899, even then he lay under this burden that he was a man convicted of sedition. He thought then, as I submit to you now, that there is a world of difference between being convicted, and rightly convicted, of sedition and being a person who is accused of being the real author of murder. What did he do? He took proceedings in Bombay in the very city in which the "Times of India" is published—in the centre of the very population, both native and official, which had the best reason for knowing whether he could safely take proceedings or whether he would be exposed—he took proceedings against the "Times of India" and here are those proceedings set out in this book. What does the "Times of India" do? The "Times of India" is not a twopenny-halfpenny sheet that cannot afford to fight a libel action. It is the great leading paper read by Anglo-Indians. The "Times of India" does what? It comes into Court, and

it not merely apologises and withdraws, but it does a thing which is far more significant than that. It does a thing which in my experience very rarely does happen in a Court of Justice in a libel action. It instructs the Counsel, the barrister who appears for it, to state publicly to the Court that in apologising and in withdrawing, the "Times of India" is not merely engaged in some piece of legal tactics, but that in stating their extreme regret and in affirming that they do not believe anything of the sort they are speaking that which the "Times of India," its conductor and editor, believe to be true. That is to be found set out in the "Times of India," not in some highly-coloured oriental form in a native paper, but published in this great English Journal, the "Times of India," page 5, columns 4 and 5, of the 9th November, 1899, and in the pink book it is to be found at page 46: "Mr. Tilak and the 'Times of India.' The alleged defamation. At the Esplanade Police Court, this afternoon before Mr. J. Sanders Slater, Chief Presidency Magistrate, the action for defamation filed by Mr. Bal Gangadhar Tilak against Mr. T. J. Bennett and Mr. F. M. Coleman, Editor and Proprietor, and the Managing Proprietor, respectively, of the 'Times of India' was called on for hearing. The Hon. Mr. Mehta and Mr. Setalvad, barristers-at-law, instructed by Messrs. Dixit & Dhunjishaw, solicitors, appeared for Mr. Tilak." Now, Gentlemen, listen to this: "Mr. Macpherson, barrister-at-law, instructed by Mr. Bayley, of Messrs. Crawford Brown & Co., solicitors, appeared for Mr. Bennett and Mr. Coleman. Mr. Macpherson, addressing the magistrate, said: I am instructed for the Defendants, Messrs. Bennett and Coleman, and under their instruction I purpose to take a course which I feel sure will commend itself to the Court and I trust will satisfy my learned friend and his client. It is a course my clients have determined to take independently of any legal advice whatever, and prompted only by their own sense of what is right and just and fair to the Plaintiff. That course has already been shadowed forth and more than shadowed forth in the paragraph which appeared in the "Times of India" the very morning after the information was filed before your Worship, and I cannot do better than read that

paragraph." Even Mr. Macpherson goes on acting under the instructions of the "Times of India" and the conductors, Mr. Bennett and this other gentleman who are Englishmen like you or I or at any rate Anglo-Indians and makes a full and unconditional retraction of the whole thing. What is he referring to when he says that this withdrawal and apology which was not a mere barrister's device, a mere trick of advocacy, but was really the deliberate opinion he was instructed to express by his own clients? It has already appeared in the "Times of India" and here it is on page 46. In the "Times of India" there is inserted an editorial note, and there they have said this: "With reference to the application made yesterday before the Chief Presidency Magistrate on behalf of Mr. B. G. Tilak it is right that we should state that yesterday's proceedings for the first time brought to our notice the paragraph whose publication is complained of. It appeared amongst a number of cuttings from the London Press; commenting upon the appointment of the new Governor of Bombay, which were selected and arranged by our London correspondent." It goes on to explain how it came by it, and it says: "We have no hesitation in saying that we in no degree associate ourselves with the views of the 'Globe,' that if the paragraph in question had been brought to our notice it would at once have been struck out, and that we regret the insertion through inadvertence in our columns of statements"—of what?—"statements which we regard as unwarranted, and as doing a serious injustice to Mr. Tilak."

Now, Gentlemen, surely these three matters to which I have called your attention are matters which might have found some place in the address of the Counsel for Sir Valentine Chirol, if, indeed, it was not his better course to pass them by in silence. Mr. Tilak is here saying: "You have libelled me in this book, because you say I am the real murderer"——

Mr. Justice DARLING: "The real author of the murder."

Sir JOHN SIMON: Yes, my Lord, that is right. I want to put it quite exactly.

Mr. Justice DARLING: The words are "The real

author."

Sir JOHN SIMON: Yes, my Lord; your Lordship is perfectly right. It is difficult to look at documents as one speaks. I had no intention of altering it.

Mr. Justice DARLING: No, of course not.

Sir JOHN SIMON: "Was not Tilak rather than Kanhere the real author of the murder? It was merely the story of the Poona murders of 1897 over again." Gentlemen, before you approach the case which is attempted now to be so elaborately built up out of these articles in order to fasten upon a man, seditious I daresay, convicted I daresay; a man who writes the most violent and most reprehensible journalism I daresay—before you fasten upon him the charge which Sir Valentine Chirol makes against him in regard to the murder of Mr. Rand, I beg you to weigh those three matters to which I have called your attention: first, that he was prosecuted after Mr. Rand's murder. Nobody ventured to say: "You have been inciting either to this murder or to any murder." His prosecution was a prosecution for sedition, which means writing articles calculated to cause disaffection to the Government, and I have already reminded you, both the Judge and Advocate General in terms expressly disclaimed that which might otherwise have entered into the notions of the Jury. Secondly, that Lord Sandhurst, with these articles appearing week by week under his very eyes, with the whole machinery of the Government of Bombay to watch who were the characters in this great crowded area, they were characters that must be kept under strict control—Lord Sandhurst affirmed his selection to be a member of the Legislative Council. Thirdly, when the great newspaper of India, with all its power and authority, and with all its knowledge of what was happening in Bombay and Poona, by a slip, by an accident which I daresay was no fault of theirs, simply because they were printing a cutting from somewhere else inserted what you know about Mr. Tilak, and not content with making an apology they put it on record in the most solemn form that when they asserted that they disclaimed any assertion against Mr. Tilak, they were asserting that which they in their heart and conscience knew and believed to be the only fair way

in which they could speak of this person. That does not mean to say the "Times of India" approved of it. You can see in these articles they were attacking and criticising in strong, I daresay not too strong, terms, many things which Tilak was writing and saying. The "Times of India" was no friend of his. The "Times of India" had this virtue. It knew very well that the very city where the Government itself was, is not close to that other great city where Rand was murdered, and the only course they could take when attention was called to what they had said, was to say that it really is, as we realise, wholly without foundation, and we do not make any attempt to justify it; it appeared through an accident and slip, and we know nothing about it. Then, Gentlemen, there is a fourth thing which I think will strike you. Granted that the Government prosecuted Mr. Tilak immediately after Mr. Rand's murder, it did not prosecute him with any reference to that murder or any murder. Granted that it would be wholly proper for a Judge who was sentencing a man convicted of sedition to have regard to the man's conduct, especially if that man was the conductor of a newspaper and a man of some public position, so far as it appeared from the proceedings at the trial, or so far as the facts were shown to be after his conviction, what do you think would happen at the Old Bailey here in England if a Judge of the High Court, my Lord or any other Judge, had before them a man convicted of sedition, writing these seditious articles when he knew, and all around knew and felt, that though they could not bring the legal charge home, really the hand that struck down was the hand of the man in the dock. What do you think he would do? Do you think he would compliment him on the good work he had done during the plague? That is what the Judge who sentenced Mr. Tilak did.

Mr. Justice DARLING: Which Judge are you speaking of?

Sir JOHN SIMON: The first one.

Mr. Justice DARLING: Not Mr. Justice Davar.

Sir JOHN SIMON: No, my Lord; I am confining myself strictly to the Rand case for the moment. In

pointing out this, there are three or four facts which seem to me to be serious facts which are obstacles in the way of Sir Valentine Chirol, who cheerfully comes into Court, and says: "This man has been convicted twice of sedition and writing these articles about the soldiers, and I say every word of it is true, the Jury will say it is true even though I do not prove this, that or the other." Not at all. Each of you Gentlemen have to see each of these papers, and you have to do justice to a man be his skin white or black, be his character good or bad. My learned friend once or twice in this case has emphasised some passage as a dreadful passage. Gentlemen, a man must be excused though he be an advocate, if he says it is a dreadful passage in which there are some reflections on the British soldier. I would not demean myself to stand here and profess for a moment that I was seeking to justify everything which is to be found in these books. It is not my business. My business is to see, in spite of the prejudice which very easily arises against a man who has written like that, and has been convicted like that, that we in these Courts still secure that even the devil gets his due. My friend just now referred to the expression which obviously has reference to the Hindu mythology in which there was a comparison made between the work of British soldiers and some devils in some ancient Hindu tradition. I do not think my learned friend was quite fair about it, because really if you read the article you can see, though no doubt it is undesirable you should make such comparisons in any circumstances, it is quite clear that it is intended to be the application of a metaphor from Indian mythology. If I were to say of myself, speaking after Sir Edward Carson and before Mr. Justice Darling, that I was between the devil and the deep sea, that would not mean that I was passing the slightest reflection upon either of those two gentlemen. I do not say so in the least, because I know very well that when the learned Judge comes to address you he will offer to you, as the learned Judge always wishes to do, a fair comparison between the arguments on one side and the other; but I say be that as it may, whatever be this man's record, and whatever be the circumstances of prejudice against him, you will see that he is given your

honest judgment with respect to the very issue that is before you. The issue is this: Are you really prepared to say that the Defendants have proved what they wrote about Mr. Tilak in reference to the Rand murder when you are faced with the tremendous difficulty which instantly strikes the mind having regard to those four or five facts to which I have just called your attention.

Now, Gentlemen, if I may, I will say one word, though it is just out of order, before my Lord adjourns. There will be one or two things I shall have to say to you further about the Rand case when you come back to-morrow, but I should like while it is fresh in your mind to present to you one or two considerations about the Jackson case, because really what struck me as one has been listening to my learned friend, accomplished advocate as we know him to be, is that he certainly is not facing his difficulties, and I can only suppose it is because he realises that he cannot overcome them. Let me take the Jackson murder and let me at once make this plain. I have never said, and it would be a most foolish piece of advocacy to attempt it, that because Mr. Tilak is locked up in prison on a given day that therefore he could not have any responsibility for the murder committed on that day. That is not any part of the argument. The argument is a thoroughly different one. The argument is this: Where was Mr. Jackson murdered? At a place called Nasik, a place, as you have heard, with very special local traditions and circumstances. Who murdered him? A man named Kanhere, who made a couple of confessions quite contradictory one of the other but both of them alike in this respect that he made it quite plain that the idea of it had come into the mind of himself and those other arch-conspirators comparatively recently. The very pawning or selling or stealing of that wretched gold bracelet, which was the means by which they got the pistol, happened in the year 1909, and consequently you see the strength of the case here is that unless you are going on the principle that a man like Mr. Tilak, however many years his imprisonment, is to be treated as responsible for every murder that happens before he comes out—the strength of the case is

the mere fact that he is in prison at the time the murder is committed. But when you look at the record of what happened, it happened at a place which is not the centre of Mr. Tilak's activities, and it happened at a time when in the nature of things his activities cannot be having full play, by the hand of a wretched boy who makes two contradictory confessions, but he makes it quite plain, he and his companions, that the idea and the plot and everything else so far from being part of some conspiracy or motion spreading right through the unruly Hindu population is traced to a local personal matter upon which there is a special secret conspiracy.

Gentlemen, the next point is this. I wonder whether you yourselves are not already bursting to ask this question as I confess I have been for some time of my friend on the other side: "You read these books, book after book, in order to show that Mr. Tilak was criticising and denouncing Mr. Rand—a wretched miserable business—but where is the denouncing of Mr. Jakson?" During all the time Mr. Tilak was out and writing these papers, where do you find in the "Kesari" or the "Mahratta" this denouncing of Mr. Jackson? The answer is "Nowhere." I can understand, it being said when you find a series of articles witten in Poona about a civilian, Mr. Rand, who is administering the affairs of Poona, that you must look at those articles and see whether they can be regarded as proving whether the proprietor and publisher is responsible for what happened to Mr. Rand. But here is a nice state of affairs. Mr. Jackson, I gather, was one of the most beloved, most respected and splendid Civil Servants in India. Mr. Jackson's murder is not at Poona, but at Nasik, by the hand of a man who was one of a secret cospiracy which had recently sprung up, with a weapon which appears to have been bought as the result of a robbery that occurred. Mr. Tilak could have had nothing in the world to do with it. Not only so, but you cannot find, during all the time Mr. Tilak is publishing these papers, however violent his language, a single passage in which whether in the Mahratti tongue or the English tongue, he ever said anything at all which would point to

Mr. Jackson's life being attempted or Mr. Jackson's record being attacked. That is the point of it.

Now, Gentlemen, let me remind you of this. All this must have been very well known to Sir Valentine Chirol. He must have known quite well that as a matter of fact there were two confessions, and they were inconsistent. Sir Valentine, I think, in one of his answers, said he was not a lawyer, but he knows this quite well as an ordinary man of the world, that at the best of times a confession made by some man who was caught who has committed a crime is not the very best evidence of the truth of everything that is in it. He knows very well that some wretched boy who has been caught fresh from this horrible deed is more likely than not when he finds himself caught at any rate to try and throw the blame on to somebody else. How many boys are there in this country when found guilty of some theft say that it is all through going to the pictures or reading penny dreadfuls. Is it a very surprising thing that when this boy, a 17 year old boy, was caught after this horrible crime, he gives one account and afterwards a second account, and when asked questions, as they apparently do in India, a thing which nobody would allow in this country, said that it was the papers. What papers? "The 'Kesari,' the 'Rashtramat,' and 'Kal,' and other papers." Gentlemen, you will not fail to observe that he adds "and other papers," and unless on evidence of that sort you are going to say that you would be prepared in a criminal trial to hold that there was at any rate evidence seriously to consider, then it seems to me with great respect impossible to say here that Sir Valentine Chirol has proved that which he so stoutly asserts, and not only so, but Sir Valentine Chirol knew quite well that there were two confessions. Where is there any trace in this book, where he is quoting this as one of the things which justifies him in making this terrible charge against the Plaintiff, any indication that he is saying to his reader: "You know you must be careful in forming this conclusion, because I ougt to tell you that the evidence upon which I am relying is the evidence of a man who does not say the same thing twice running, and who in any case was a boy who could not give evidence

on oath, and I have not been otherwise able to test it." I shall submit to you, in the remarks which I still have to address to you about these two matters of Mr. Rand and of Mr. Jackson, that very grave as is the comment which any good citizen will make on much of Mr. Tilak's writings, there is no solid ground on which you can properly say that the things which have been written in this book about him are proved to be true.

(Adjourned till to-morrow morning at 10. 30.)

ELEVENTH DAY.

February 21, 1919.

Sir JOHN SIMON: If your Lordship pleases, we have reached what I think we may expect to be the final day of this case, and I hope to be able to avoid occupying more of your time this morning than will be necessary if there is to be a fair opportunity of your reaching your conclusion before the end of the day. During the short time that I was addressing you yesterday you will remember that I was pointing out to you what in fact are the boundaries within which your inquiry has to range, and I was urging upon you that whatever other matters lying outside the immediate questions in this case may suggest themselves, and however important these matters may some of them be, deeply important to any one, whether you or me, who is a devoted and loyal subject of the Crown and deeply concerned to see that the splendid British Empire is maintained, those questions must always be put in their right relation to the real question that you have to decide.

Gentlemen, I am going this morning, if you will kindly follow me, to take the six libels in order, and I want you as I take each in turn to devote your mind to the one I am for the time being taking, and to ask yourselves as I bring the matter before you whether I am straining unfairly or misrepresenting how the matter really stands, or whether on the other hand those matters which I am urging on your attention are not really fair matters for you to consider in arriving at your conclusion. Now let me take that which, from the beginning, I have regarded as the first libel; it is convenient to take the order in which they appear in the Statement of Claim to avoid confusion. You will remember that the first of these six libels is what I called from the start the Cow-Protection libel. I do not want to spend very long about it, because I quite agree that, as compared with the charges of being responsible for murder or charges of being a man wanting in common honesty, of charges of being a man who has used his newspapers for the purposes of blackmail, I quite agree compared with those grave charges this first libel may be regarded as

comparatively unimportant. But it is only comparatively unimportant. For if you will put yourselves for a moment in imagination in the position of a man who belongs to one of these great historic races in India, the Hindu race with its long tradition, its special customs, its high religious rites and ceremonies, and will then consider how such a man would be affected by this first libel, if it is not justified, you will see that the matter has importance. Let us begin by looking at page 43 of the book, "Indian Unrest," and there you will find the words which the Statement of Claim points to which the Plaintiff here says are a libel on him, and he comes before you here and asks you to judge in respect to this matter as between him and the Defendant. I will pick out for your convenience exactly the words that are complained of, neither more nor less, because, as I suppose you know, in a libel action a Plaintiff is entitled to put his point of view on the words that he complains of, then, of course, you Gentlemen are at liberty to look before and after, and see what is the setting of those words. It is no answer to the Plaintiff when he says these words are a libel on me, to say: there are other passages in the book which you do not complain of which also are injurious to you. These are the words complained of in the first libel, at page 43, and it begins with the third sentence of the paragraph that starts about eight lines down that page, beginning: "In 1893."

Mr. Justice DARLING: I have an official copy of the pleadings, as you know, but I have another from the parties, and I intended handing it to the Jury, so that they could have before them when they considered their verdict the very words complained of. I think it would be convenient if I handed it to them now.

Sir JOHN SIMON: I am very much obliged, my Lord.

Mr. Justice DARLING: You will see, Gentlemen, the exact words complained of in the Statement of Claim as being libellous. You will see the words stated to be libellous I enclosed in these brackets and nothing else in the Statement of Claim is said to be libellous. I have not troubled the Jury with all those paragraphs about innuendos.

Sir JOHN SIMON: I am much obliged, my Lord, it will both shorten the matter and help to make it clearer. You will understand my professional duty here is to see that you have as clearly as I can make it before you the actual matter that you have to decide. That is my duty. Now, Gentlemen, that makes the matter very plain. Looking at page 43 you will see there is that sentence beginning: "In 1893 some riots in Bombay of a more severe character than usual gave Tilak an opportunity of broadening the new movement by enlisting in its support the old anti-Mohammedan feeling of the people." Then, Gentlemen, the Statement of Claim omits a few words, indicating the omission in the ordinary way by some dots. What is complained of then goes on after the word "but": "He started an organisation known as the 'Anti-Cow-Killing Society,' which was intended and regarded as a direct provocation to the Mohammedans, who like ourselves, think it no sacrilege to eat beef. In vain did liberal Hindus appeal to him to desist from these inflammatory methods." If you will concentrate for a moment on that passage, that is the first of the six libels which Mr. Tilak here complains of, the first question to ask yourselves is, taking a fair view of it, what does it mean? One of the questions you are at liberty to deal with is this: Is it, in fact, libellous, does it reflect on the Plaintiff injuriously at all, whether true or false? It is obvious, is not it, that to say of a man who is himself a Hindu, with attachment to the traditions and principles of the Hindu, that he starts an organisation for the protection of cows not because he is sincerely and deeply devoted to the truths as they regard it of the Hindu religion but because it is intended as a direct provocation to Mohammedan fellow-subjects is deeply injurious. If in the town of Liverpool where there are living side by side Protestants and Roman Catholics you were to say of some convinced Protestant who was rightly or wrongly convinced of the necessity of maintaining the evangelical character of the Protestant religion: Oh he starts a society in order to maintain a principle of that sort but he is really doing it for the purpose of insulting the Roman Catholics who believe in the Virgin Mary, it

might be true, it might be false, but it would certainly be grossly defamatory. I submit that is clearly a libel, and if you put yourself in the position of the Plaintiff here unless that is proved by the Defence to be true it is, I submit to you, certainly an injurious and a serious libel. Well, now, is it true? I am not going to haggle about small technical words, but there is one statement in this which no human being can suggest to be true. Sir Valentine Chirol through the mouth of his Counsel, says that he does not withdraw a word, justifies every syllable, and all the rest of it—that is the rhetoric of my learned friend. And Sir Valentine Chirol could not for an instant suggest that as a matter of fact it was Mr. Tilak who started the Anti-Cow-Killing Society. It is an established fact in this case admitted by Sir Valentine Chirol himself that as a matter of fact Anti-Cow-Killing Societies, or, I think, more accurately translated Cow-Protection Societies —of course, we are translating an oriental work—societies devoted to the protection of the cow, have existed in India and in many parts of India, in all parts of India where Hindus are congregated together in large numbers for a great number of years and for generations. So it certainly is not accurate to say of Mr. Tilak, whatever else he may have done, that they are to be traced to him. In the second place Mr. Tilak has given you his own evidence about it. I would like to refer to his actual language, because what is important here is what the witnesses say, far more important than what any Counsel says on one side or the other, and turning to page 77 of the Shorthand Note here, let me read to you a passage, and then I will leave this branch of the case, so far as Mr. Tilak's evidence is concerned, in your charge. Question 60—it is quite a relief to go to Question 60, because I see by the time we had finished the evidence we got to Question 3000 and something: "Now about the Cow-Protection Societies It is alleged in the first libel"—and then my learned friend, Mr. Spence, who has been helping me right through this matter so diligently, reads to him those words which I have just called your attention to in the book and he asks him: "Did you start any Anti-Cow-Killing Society?—I have never started any Anti-Cow-Killing Society. Q. Or Cow-Protection Society?

—Or any Cow-Protection Society, myself; nor were any started in that year. Q. Were there any Cow-Protection Societies existing before this year?—Long before—50 years before. Q. Did you belong to any Cow-Protection Society?—No, I did not. I am not a member, nor a supporter of them. Q. You have never subscribed to them?—I have never subscribed. Q. About how many were there in existence in 1893?—Two of them were the principal ones, with branches—I do not know how many. Q. Were they confined to the Bombay Presidency?—No, one was in the Central Provinces, Nagpur; one was in Bombay. Q. Are you acquainted with the purposes and objects of the Cow-Protection Societies?—Yes. Q. What is the purpose or object of a Cow-Protection Society?" Then Sir Edward Carson suggested he could not answer that as he did not belong to them—I suppose a man could describe the object of the game of cricket even if he did not belong to a cricket club. Mr. Spence then says: "Does the cow take an important part in the religious ideas of Hindus?—The cow is a sacred animal according to the Hindu; the killing of it is prohibited. Q. Also does it take a very important place in the economy of India?—Yes, in the social economy of India it takes an important part. Q. Why does it do so?"—I do not think the witness at first understood—"Because the cow is sacred according to our religion. Q. I asked you, apart from the religious aspect of the cow, is it regarded as of great importance?—From an agricultural point of view. Q. Are the Hindus vegetarians?—Most of them. Q. As regards the Mohammedans and cows, the Mohammedans are not vegetarians, are they?—No. Q. Is it any part of the Mohammedan religion to kill cows?—So far as I know, it is not a necessary part. Q. So far as your actions are concerned, were the Cow-Protection Societies intended as a provocation to the Mohammedans?—No. Q. Did the Cow-Protection Societies in themselves act as a provocation to the Mohammedans, as far as you know?—As far as I know they did not." There is a misprint in the next answer, the word is not "riots," the word is "Societies." "Q. Were there riots of this kind in the other parts of India where there were Cow-Protection Societies?—Societies in many parts."

Mr. Justice DARLING: Yes, I have it corrected.

Sir JOHN SIMON: I have read that to you, Gentlemen, not of course because you are called upon to accept every word that a given witness says in that box as though it was the only evidence in the case, but because that shows to you very clearly and simply why Mr. Tilak, the Plaintiff here, says now: if you will look at this passage it accuses me of a thing I never did. The next question you will ask yourselves is: Well, if that is what Mr. Tilak says, what is there that is said against it? I have already pointed out to you that nobody can suggest, Sir Valentine Chirol himself does not assert, that as a matter of fact Cow-Protection Societies were an invention of Mr. Tilak. I have pointed out to you that the fact is and is bound to be admitted that they exist in many parts of India. You will notice, this is a very striking circumstance, that Cow-Protection Societies existed without there being riots and that riots arose without there being Cow-Protection Societies, and if you can, as we all have to try to do in this case, in imagination put yourself in the position of this great section of the King's subjects who, strange as it appears to us, ridiculous perhaps as it appears to us, in point of fact in accordance with the degree of their own religious devotion regard this animal as being in some sense the embodiment of some of the sacred personalities of their religion, you can understand that a man who, whatever else he may be, agitator, sedition monger, scurrilous journalist, if you like, you can understand that such a man may very well be a person who maintains along with many others of his fellows and maintains with very great vigour this proposition, that the cow is sacred and all the rest of it without on that account being shown to have committed this gross piece of hypocrisy, hypocrisy which is as grave as if a Protestant was to protest some Protestant truth when the real reason was the desire to stir up feelings among Catholics, this gross hypocrisy to pretend to hold these religious feelings sincerely when all the time he is trying to make mischief with the Mohammedans. The next question in this connection I think is this: Is there any evidence in these books that Mr. Tilak in fact was taking any and every opportunity to embroil his own religion with the

Mohammedans, and I have noticed, perhaps you will remember in the course of this case, and this weary searching through these books, I have come across several passages, I think I may say many passages, which, as I suggest to you, show very clearly that as a matter of fact Mr. Tilak, grave as is the responsibility which rests upon him for much that he has done and said, to all appearance so far from setting out to try and annoy and irritate the Mohammedan population, was making overtures to them to see whether or not the platform upon which he stood should not be made broad enough to admit the Mohammedans as well as himself. Let me give you an example: Very early in the case you had your attention directed to that Shivaji memorial meeting in the year 1895, which, mark you, is two years after these riots in Bombay, and, therefore, a very relevant date when you are considering this passage in that book, that Shivaji memorial in the year 1895 when Mr. Tilak was present, and when there was a great demonstration reported in the "Mahratta." The passage I was going to refer to is in the Pink book at page 223, and I see that at that demonstration Mr. Tilak being present, and, indeed at a later stage making a speech on page 223, the President is described as received with deafening cheers. At every stage in this case you see oriental extravagance in language as many of us would regard it, is very obviously present. The President received with deafening cheers addresses them: "Mr. President and Gentlemen, my first feeling is one of intense admiration for those gentlemen who have organised this vast, this enthusiastic, this unparalleled demonstration in favour of the Shivaji movement," and so on. Then he goes on and says: "the object of which is to commemorate the memory of the greatest Hindu hero of modern times, and the founder of the mightiest Hindu Empire in these latter days." Then he says this, and the relevance of it all is, Gentlemen, whether language of this sort employed at this Shivaji memorial is language which is intended as a direct provocation to Mohammedans or whether it does not indicate a very different religious attitude as between the two. "Shivaji fought with the Mohammedans and had recourse to

arms."

Sir ELLIS HUME-WILLIAMS: This is not the Plaintiff speaking.

Sir JOHN SIMON: I have said so. The Plaintiff was present and at a later stage speaks. This is the honourable president.

Mr. Justice DARLING: Are you sure, Sir John, that this has been put in? It is from the "Mahratta," and I marked, I think, everything which was put in as it was put in, I have got this one marked.

Sir JOHN SIMON: I should like to be sure about it, I can only say, as my own copy is rather elaborately marked, it would surprise me.

Mr. Justice DARLING: I may make a slip, but I thought I noted everything.

Sir ELLIS HUME-WILLIAMS: I am almost sure it has not been read.

Sir JOHN SIMON: I cannot of course, at the moment search for that. Gentlemen, I will put this passage aside, it is quite immaterial, so far as my ability to make the point is cocerned, because, as I said, there were a number of passages which I had in mind. I will pass this one for the moment aside, I will give you another, and you will have the additional advantage that it would appear to be quite obviously Mr. Tilak's own language, and there is no doubt about this having been put in, because he was cross-examined about it. If my Lord will kindly take the reference to the second green volume at page 618, here, Gentlemen, was a passage which was referred to only yesterday, it is on the same point, from my point of view. It was in 1905 in the "Kesari" the Shri Ganpati festival. There appears at the bottom of page 618 this: "After this the chairman, Mr. Tilak, while concluding the subject said: When this festival was first started, that is to say, when the present aspect was given to it 'political training' or 'public movement' was the sole object of the starters. Consequently there is nothing wrong in that public matters are considered before the Ganpati." Then he goes on with these words: "It is alleged that Mohammedans feel offended by this festival. But it appears that these accusers have invented this theory sitting in their chambers"—sitting in their

armchairs, as we should say—"If someone gives an undertaking that if this festival is stopped Mohammedans will render us full help in our national cause, we will positively stop this festival. Nay, we are prepared to go so far that except giving up the Hindu religion, we will do whatever else is required to keep our Mohammedan brothers pleased. But, we will not hurt the feelings of Mohammedan brothers. But this accusation having been invented merely out of their own imagination by the enemies of the Ganpati festival much importance need not be given to it," and I think before I sit down, with the help of my learned friend I will find you another passage, even if I am not able to check the one I attempt to put before.

Now, Gentlemen, I wish to be quite frank with you. Granted that there may be found in these extracts here and there language, more particularly in the poetical section, which, naturally enough ruffles, and I daresay even irritates, the Mohammedan point of view, just as you may find in every religious tract something which reflects and irritates the point of view of another, and perhaps an opposed religion, that is a very different thing from saying of a man if he is really a sincere and devoted adherent of a religion, that he is a person who has set himself to exploit one of the sacred doctrines of his faith with the deliberate intention that he should thereby provoke Mohammedan protest. That is the question in this libel, and my submission to you about this first libel, not, I quite concede to you, the gravest of the six, but still a libel of much gravity, if you will imagine that it was your religious convictions or mind which were here being called into question, that is the gravity of this first libel: and that is the point of view from which on behalf of the Plaintiff it is my duty to ask you to regard it. I think perhaps I ought just to remind you before passing on, of this further matter in connection with the first libel. The Bombay riots having occured in 1893, and there being naturally a good deal of discussion as to how it came about, it will be within your recollection that it was proved in this case by extracts which I read in opening, and will refer to again afterwards, that the Government of Bombay itself held an enquiry. Now, I

suppose there is no subject upon which it is more difficult to arrive at a certain conclusion than the origin of a riot. Perhaps we need not go so far away as India to realise that that is so, and it may very well be that in the origin of most riots more than one party is to blame, and especially that is the case in those riots involving the hideous feature that you have frenzied and ignorant people who believe themselves to be actuated by religious motives in conflict one against the other. But as I pointed out to you when the Government of Bombay in 1894 began enquiring in order to ascertain what the real reason—I think it is at page 101 in the first volume, more particularly page 102—this report on the matter, not some garbled or distorted extract, not some summary, but the report itself, is reproduced in the native newspaper, in the "Mahratta," and without troubling to read through again what I read to you some time ago, what the Government of Bombay says I will remind you of on page 101: "The Governor in Council"—in paragraph 11—"now comes to a consideration of the causes which led up to the deplorable outbreak"—and after discussing that it says: "The result of his enquiries among prominent members of both the conflicting communities has been to throw considerable doubts on the possibility of ascribing the trouble to any one cause. On the other hand, the leaders of the Mohammedan community asseverate with certainty that the anti-kine-killing agitation, which has of late undoubtedly become more active, was the sole cause. Hindus, on the other hand, while admitting that the cow-protection movement may have been a contributory cause, contend that the main factor was an intrigue set on foot by persons of authority in the State of Junagadh in Kathiawar, with the supposed object of distracting attention, by raising a riot in Bombay, from the Prabhaspatan riots which had occurred in that State a short time previously. In support of this theory it is pointed out that emissaries from Junagadh were in Bombay stirring up their co-religionists"—that is stirring up the Mohammedans—"to a practical sympathy with the rioters arrested in Junagadh, that there were distinct signs of premeditation in the fact that the mob issuing from the Mohammedan Temple were

armed with sticks, whereas no sticks had been observed in the possession of worshippers during the service; and that there were present in the neighbourhood of the mosque that day a number of bad characters who do not ordinarily attend there and would not have done so on this occasion if it had not been made worth their while." The Government of Bombay is setting out two competing explanations and it is saying it is rather difficult to know, that this is the way one set of people and this is the way another set of people explain the riots. Then on the next page, paragraph 15: "His Excellency observes that Mr. Vincent"—the police magistrate—"lays the blame primarily at the door of the Cow-Protection Societies in Bombay and elsewhere, while he admits that the religious riots in other parts of India, especially at Prabhaspatan, and the meetings held in Bombay by both communities in connection with these last were contributory causes. Mr. Vincent's opinion, in a matter of this kind, is of the highest value, but it is to be observed that, while the cow-protection movement has undoubtedly been pushed of late with growing vigour, the movement itself is not a new one." How is it that Sir Valentine Chirol writing this book and dealing with the Bombay riots should not have acquainted himself with the report of the Government of Bombay, an official report and a public document which would have saved him from what he says there: "Having regard to the fact that the Mohammedans on the one hand know perfectly well that the protection of the cow is an accepted principle in many parts of India, and, on the other, that as they are equally well aware, in all stations where Englishmen reside the supply of beef is regularly arranged for, though with such precautions as are necessary to avoid gratuitously wounding the feelings of Hindu"—listen to these words: "The Governor in Council"—that is the head of the administration of this great Dependency—"The Governor in Council hesitates to adopt the opinion that the cow-protection movement is the principle cause of these riots." I am entitled to say on behalf of the Plaintiff, Sir Valentine Chirol comes here and asks you to accept it as a student, I understand an impartial and a careful student of the materials

properly to be studied before a man pronounces an opinion on so debatable a matter as this. Where do you find in his book the least trace that he desires to concede what the Government of Bombay there in fairness does concede to the Indian community, namely, cow-protection is a very old tradition in India. True there has been some increase in the keenness with which it has been preached of late but still it is old. True that this is calculated to disturb Mohammedan feeling, but still the Mohammedans gathered in their own temple armed with sticks; people do not worship according to the teachings of Mohammed by taking sticks to church. Bad characters are gathered round about the place, it had an air of being pre-arranged and granted therefore says the Government of Bombay that the opinion of the police officer who points to the cow-protection movement is one of importance and weight, still we hesitate to say that one should contribute to the cow-protection movement as the principal cause, the explanation of this dreadful outrage. That is what the Government of India say. What Sir Valentine Chirol says you see at page 143, and I with very great respect submit to you, Gentlemen, that dealing with that libel No. 1 on the evidence before you, you have no alternative but to say Sir Valentine Chirol may be well justified in making comments that he makes elsewhere in his book, but in saying that he is saying something which he is quite unable to justify and as he is quite unable to justify it, the usual consequences must follow.

Now I pass to the second libel. The second of these libels I have called for convenience the gymnastic societies. You, Gentlemen, will find it on pages 42 and 43 of the book. Just look at the actual words: "With the help of the brothers Natu, who were the recognised leaders of Hindu orthodoxy, he (meaning the Plaintiff) carried his propaganda into the schools and colleges in the teeth of the Moderate party and proclaiming that unless they learned to employ force the Hindus must expect to be impotent witnesses of the gradual downfall of all their ancient institutions, he proceeded to organise gymnastic societies in which physical training and the use of more or less primitive weapons were taught in

order to develop the martial instincts of the rising generation." I think you will agree it is the reasonable and proper course to take, I have no duty but to ask you to address your mind to the point and suggest to you how the matter really stands, that the first thing you have to ask yourselves is what does that mean? It plainly means this, does it not? In the first place: The brothers Natu are referred to there not without intention but deliberately because the brothers Natu as you have heard in this case were people whom the authorities had to deport, to move clean away, because they were bad citizens so it is not a very nice thing to begin by saying that a man has done something with the help of the brothers Natu unless it is true: "He carried his propaganda into the schools and colleges in the teeth ot the Moderate party, and, proclaiming that unless they learned to employ force." Whatever else that means it has several compartments in it, it plainly includes this, that it is an assertion that Mr. Tilak has been organising gymnastic societies, and he has been organising them, not for the bonafide object of maintaining as I suppose every man is entitled to maintain in his own community the union and good feeling and pride which attaches to any given community of men, but that he is all the time doing it with a villainous secret motive, the motive being that he is getting them taught all these things in order that they may become physically stronger, and in temperament bold enough to take up arms, and plainly the implication is to take up arms against the British Government. Well now, allow me to say in the first instance that I think a gentleman must be a little credulous—Sir Valentine Chirol will excuse me for saying so—even if it were true that Mr. Tilak took an interest in and organised gymnastic societies, if he supposed at one and the same time that Mr. Tilak was a very clever and intelligent man, and that Mr. Tilak was a man who thought that by teaching a number of Hindu youths single-stick and the use of Indian clubs he was thereby going to turn out the British Raj. Either Mr. Tilak must be an unintelligent and stupid person, or else it is hardly possible to conceive that he should imagine such in any case. I used the expression Indian

clubs, and it will now have struck you that though we are not all of us included in the conspiracy, those who after we have indulged in a cold bath go in for these exercises, are using these very Indian clubs. In point of fact, gymnastic exercises are no more the invention of Mr. Tilak in India than cow-protection. The Indian gymnast, whether he takes the form of the juggler or the man who performs with poles, sticks, matches and so on, the Indian gymnast is, as I am sure you must know, one of the social features of large parts of Indian society, and therefore it takes a great deal of proof to show that Mr. Tilak the Plaintiff, here in the first place has organised these gymnastic societies, and in the second place organised them for this detestable object. That being what it means let us next see how the evidence stands, because after all this case must depend on the evidence, and on the evidence so far as that evidence affects Mr. Tilak. You are not at liberty, and you would not wish to condemn Mr. Tilak in regard to this second libel because other people may in some part of India or another have shown themselves extravagant, and it may be, have shown themselves rebellious and revolutionary in connection with some gymnastic festival or society. The whole question is, what is the justification for saying this about Mr. Tilak? First of all what does Mr. Tilak say about it, because I suppose before a man is libelled without redress, he is entitled to be heard. What does he say? Beginning at the bottom of page 81, Mr. Spence follows exactly the same course; he reads these words to the Plaintiff, then asks the Plaintiff what he has to say about it. The first thing the Plaintiff had to say had in my eyes the very great advantage that it was one of the humourous incidents of this dreary case; he told us something about the brothers Natu, who Sir Valentine Chirol evidently knows here to be recognised leaders of Hindu orthodoxy, they are so orthodox that they prosecuted Mr. Tilak in the Religious Court for drinking a cup of tea with a Christian, and such is the high and protracted character of legal proceedings when India comes into play, that this interesting law-suit lasted two years. You and I, Gentlemen, cannot be too grateful that we are only dealing with six libels; if it was a storm in a teacup

it would last two years. Having pursued the Plaintiff before this religious court, I daresay from their own point of view quite rightly, and having thereby exhibited themselves as people by no means friendly, but people who were doing their best to bring him to book, this article begins by saying what Mr. Tilak was doing, he was doing with the help of the brothers Natu. I say this to you, Gentlemen, quite plainly. There is not a scrap of evidence in this case, not a single line, to show that in carrying his propaganda into the schools and colleges in the teeth of the Moderate party, and proclaiming that unless they learned to employ force the Hindus must expect to be impotent witnesses of the gradual downfall of all their ancient institutions, he proceeded to organise gymnastic societies in which physical training and the use of more or less primitive weapons were taught in order to develop the martial instincts" the brothers Natu lent a hand the least in the world. So far as I know there is only one reference to the brothers Natu in the books, so far as they have been quoted in this connection which refers to one of the two brothers, and which appears that he was the president of that meeting, where there were 4,000 people, in which they passed resolutions. There were three resolutions, and Mr. Tilak proposed the third, which they addressed to the Government of Bombay on the subject of the Bombay riots and the causes of them. That is the place in which one of the Natu's names appears. I really do not know which of them it was, and you will see at once that there can be no justification for saying of the Plaintiff: Why you have been doing all this about gymnastic societies and you have been interfering with the education of the youth, with the brothers Natu, meaning people who have been deported by the Government. Sir Valentine Chirol attempts to show that on one occasion, which had nothing to do with the education of the youth, which had nothing to do with the gymnastic societies, which had nothing to do with the developing of the martial instincts of anybody, one of these two famous brothers presided at a meeting of 6,000 people at which Mr. Tilak proposed a resolution. I will give you in a moment the reference to the actual passage,

and you will see it is nothing in the world to do with this, therefore I submit to you that on that subject, so far as the brothers Natu are concerned, this is an apparently undefended and indefensible statement. At page 81 of the Shorthand Note we find the very thing. It is at a meeting held, I think it is on page 48 and 47 of Volume I, that is the most convenient reference, you will find there in the " Kesari " in September, 1893, which is just after the Bombay riots, there was a monster public meeting of Hindus held the day before yesterday in Poona, and you will see, when one turns over on page 48, there were about 4,000 people there, or I think they say more—6,000 or 7,000. If Indian papers are like English papers, they always exaggerate the number of people present at a meeting. On page 49 it says: "That Shrimant Bala Sahib Natu be appointed to be the president of this meeting." Somebody else seconded it; neither the proposer nor seconder are Mr. Tilak. Then he makes a speech, and this is what Natu says at the bottom of page 49: "To-day's occasion is a very delicate one. Under the rule of the English Government we have been fully enjoying the liberty of thought; and, to-day we are going to make use of one of the facilities afforded for such enjoyment, namely, holding a public meeting; nevertheless we must always take care, while making this use, not to wound anybody's feeling causelessly, while on the present occasion we must take special care not to hurt the feelings of any one at all. " Why do they say that at this monster meeting where Mr. Tilak is one of the principal figures? Because, Gentlemen, so far from it being true that the movement of the Hindus in Poona was organised for the purpose of stirring up and rendering the Mohammedans indignant, it was, whatever else it was, a movement which they apparently desired as they certainly ought to, if possible, to bring into line with the best Mohammedan feelings. I therefore say with the greatest confidenee that you, you will no doubt say, at any rate, it is a thing which nobody can defend. It does not stop there. The evidence of Mr. Tilak, to which I was just going to refer, begins at the top of page 81 of the Shorthand Notes, and I think I had better read to you a

short passage. He describes this wretched dispute with the Natus. They took a very serious step. They tried to put him out of caste, which in western civilisation we might once have called an attempt to excommunicate him; excommunication primarily only removes you from taking part in one of the sacred mysteries of the Church, but to remove a man out of caste in the ancient tradition, of which these people think so much, is exposing him, hour by hour and day by day all his life to degradation. These are the people whom Sir Valentine Chirol, a great authority on Indian affairs, asserts to have been hand in glove with Mr. Tilak in the enterprise dealt with at the top of page 43. Having dealt with that, and pointed out Natu was the chairman of that meeting, at the top of page 83 Mr. Justice Darling sums up the witness's evidence: "He said he did not carry propaganda into schools and colleges in the teeth of the Moderate Party with the help of the brothers Natu." And then Sir Edward Carson interposes to make this assertion: "We asserted with the brothers Natu." Yes, you can. But assertion is not proof, and here at this late stage in the case I am well within your own confirmation when I say there is not a scrap of proof of it. You can assert it till you are black in the face. Then Mr. Spence puts this question: "Putting the brothers Natu out of the question did you proceed to organise gymnastic societies?—No, I have not organised any. Q. You have never organised any gymnastic societies?—I have never organised any gymnastic societies. Q. Have you ever been a member of a gymnastic society?—No. Q. Have you ever subscribed to a gymnastic society?—No. Q. Have you ever been connected in any way with any gymnastic society?—Except as a spectator of their sports, sometimes." And you may remember when I opened this case I was so puzzled by this libel and so anxious, as every advocate is in opening a case, to realise what it was I had to meet that I told you I had been searching in these books and trying to find what it was which they could say Mr. Tilak had been doing in connection with gymnastic societies and the like, and the best I could do in the opening was to find an address Mr. Tilak had once delivered to some cricket club, or something of that kind,

in which he had made some humourous remarks in connection with Lord Harris that in addition to occuppying a high administrative office, he was, what was much more important in the eyes of most Englishmen, a first-rate cricketer. I know Sir Edward Carson made a reference incidentally in the course of his speech yesterday to there having been people who, in one or other of these Ganesh festivals played single-stick, swung Indian clubs, and all the rest of it. What if they did? In the first place, there is not the slightest indication anywhere that it is done with this corrupt and rebellious purpose. Secondly, there is not the slightest indication anywhere that Mr. Tilak organised such a society; and, thirdly, there is not the slightest indication anywhere that these two rebellious brothers Natu were introduced otherwise than in order to complete the passage and introduce the necessary degree of venom, or that the brothers Natu had anything in the world to do with Mr. Tilak's activities.

That is the second of these libels, not, I quite agree, the most important, but still, I think, if anyone were to say to you or I that we had been organising gymnastic societies for the purpose secretly or treacherously of corrupting the youth and training up an army who would be able to wage war against the Government of our own country, I think that we should probably find that we thought that that, at any rate, was a serious reflection upon our honesty and good faith.

Now I come to the third libel, which appears at page 53, towards the bottom of the page. You will find a passage about 12 lines from the bottom of the page in these terms: "He must have had a considerable command of funds for the purposes of his propaganda, and though he doubtless had not a few willing and generous supporters, many subscribed from fear of the lash which he knew how to apply through the Press to the tepid and the recalcitrant, just as his gymnastic societies sometimes resolved themselves into juvenile bands of dacoits to swell the coffers of Swaraj."

Now, those words are set out here as the law requires you to set out the words. Mr. Tilak comes before you and says in this case: "That is most defamatory to me if

it is not true. Why do you say it is true?" That I can deal with very shortly. First of all, let us see what Mr. Tilak says about it. I will go straight to it. It is at page 83 of the Shorthand Note and at Question 146 he is taken to this libel. Gentlemen, if you will follow this question you will see how he deals with it. The passage is read and he is asked this: "You tell us you had no gymnastic societies?—Yes. Q. At the time referred to, were you getting in sums of money for purposes of any propaganda? —Nothing for the propaganda, but there were other purposes. Q. For what purposes have you at any time collected funds or assisted in collecting funds?" and he says with indignation, and I think you will agree, the witness is entitled to show some little indignation: "I have never collected any funds through fear of lash. Q. We will go by steps, please. For what funds have you ever collected any money?—I have collected money for a memorial fund. Q. For any other kind of fund?—The Paisa Fund for industrial purposes. Q. What does paisa mean?—It is a small fund, a penny. Q. It means a penny fund. Just tell me, when did you begin to collect for the Paisa Fund, do you recollect?—Yes, I think I first took interest in it about 1900, and then that Paisa Fund was converted into an incorporated body under the Legislature Act"—like we, in this country, register a Friendly Society. "It was incorporated under the Indian Legislature Acts in 1905, I think. Q. How much is the paisa? It is a very small coin?—Yes, it was small, but it has gradually accumulated and has grown to about £6,000. Q. What was the purpose of the fund?—To start and increase small industries. Q. Has it any political purpose at all? —No, nothing. It is expressly stated in the objects that it has not to take any part in political work." I suppose it has a Memorandum and Articles of Association. Then he was asked: "Did you collect moneys for any other fund?—There is the National Education Fund for which I collected. Q. When did you begin to collect for that? —1906. Q. Was that registered or unregistered?—It is not registered, but it is a body formed of trustees and councillors. Q. Are there any other funds for which you ever collected moneys?—No. Q. Did any persons subscribe to any of those funds for fear of the lash?—

No,no lash. Q. Just follow the question: Did anybody subscribe in consequence of any threats?—No, nobody subscribed from pressure from lash or anything. Q. Did you ever attempt to put pressure upon anybody to subscribe for any fund?—No, I did not use any pressure. Q. You never used any pressure?—No. Q. Did you ever use any threat?—No. Q. The particulars in justification allege a number of articles in your papers criticising various social reformers?—Yes. There are a number of articles. Q Did you ever invite any of the persons who are attacked in your papers to subscribe?—No, nor have they subscribed nor did I invite them to subscribe. Q. They have not refused to subscribe?—They have not refused, they did not subscribe. Q. Those gentlemen criticised are criticisms upon various questions on Hindu social policy on which you put forward views in your papers?—Hindu social policy, even political matters too. Q. Ordinary criticism unconnected with any question of money?—Yes."

Gentlemen, I will say a word about one passage which my friend, Sir Edward Carson, referred to yesterday. As far as I remember it was really the one passage, certainly the principal one, which by straining, as it seems to me, the fair view of it, the Defence here seeks to bring in some sort of justification. I am sure it must be in your own mind, and I will only spend a minute or two about it, but I do submit to you that if you look at this libel and isolate it and ask yourselves here whether the Defence has justified what is there meant the answer to which you will inevitably be brought is No. There may be a good deal to criticise in Mr. Tilak, many things which a lawyer would be sorry to stand up and defend, but that is different to your saying that some of the things he has done are highly reprehensible, that thereupon the Defendant receives a kind of charter to say anything about him that he likes in any passage of this book without any regard to whether it is true or false. Of course, the lash here is a figurative expression and nobody suggests that it means that he went about with a horse-whip, but it does mean this in plain English :that you in your papers—you see " through the Press "—used violent, threatening, blackmailing language with the object and intention of compelling people who were at your mercy to make a

contribution for your political purposes for your propaganda which they would not otherwise have done. That is a very serious charge. Consider for a moment the position of many people who hold strong political opinions in this country on Free Trade, Tariff Reformers and other people. It is nothing to do with whether their opinions are right or wrong. Many people hold to these things passionately, and many exert a quite unnecessary amount of vehemence and violence either in advancing what they think or in attacking what other people think. Supposing you were to say of one of these people, however vehement an apostle of his economic faith he professed to be, who recommended to your friends and followers a particular course of conduct, because it was in the interests of the community or country, or principle, or religion, or what not, that all the time you are blackmailing them you are just using your power to scourge them and force them to contribute, whether or not, for your selfish political purposes. I submit that that is an attempt, and, as far as I know, the only attempt, that is made to justify it. It is in a passage in the second volume, at page 810. My friend, Sir Edward Carson, said what I thought was a very characteristic thing. It is a new way of justifying libelling a man. Sir Edward Carson complains of our saying he did that. He did something far worse. With all respect, if you are going to justify libelling a man, what is necessary is to justify what you do say. Nobody is entitled to say of a convicted murderer that he is a thief. You cannot say that you are at liberty to call him a thief on any day of the week because a murderer is worse than a thief. What you have to do is to justify what you say. This is in the "Kesari."

Sir ELLIS HUME-WILLIAMS: Page 801 was the first to which Sir Edward Carson called attention and page 810 was the second.

Sir JOHN SIMON: I am obliged. It is pages 801 and 810. They both appear to be either occasional notes or stray notes in the "Kesari," and both are in the year 1907: "The marriage season will commence in a few days. It appears from the market rates of Bombay that the merchants who store up Manchester cloth and foreign

sugar are eagerly awaiting at Bombay as to how soon when the marriage season shall have commenced, they would send the money of India to foreign countries by tying this foreign soot round the necks of the Hindus. If, on the holy auspicious occasions like marriages, we allow this inauspicious and ill-boding plunder by foreign goods to go on, then how can the bride and the bridegroom who are to be married be happy. If a marriage ceremony means the swarming of inauspicious and ruinous foreign articles, then what wonder is their if within a very few days of the celebration of marriages, such events as the death of the husband in some cases, and the death of the wife in others, should occur. The reformers now-a-days complain that many young women are widows, and as a remedy they have suggested that widow-marriages should be performed. So long as we are not ashamed to hold an exhibition of inauspicious foreign articles, even on such auspicious occasions as marriages, so long only poverty, famine, plague and other inauspicious events will prevail everywhere in our homes. And when this state of things has happened, whence can our people get the happiness of a married couple ? If people wish that newly-married brides should not become widows, then re-marriage is not the remedy for that. But they should take precaution not to allow the couple to have even the sight of inauspicious and ill-boding foreign articles in any auspicious ceremony. Both the parties (i. e. of the bride and the bridegroom) must understand that the vow of Swadeshi is itself the Mangalsutra "—I think that is the marriage string, that is the wedding ring—" at the wedding." Then the second one is at page 810 : " As the Swadeshi movement has now met with the full approval of all thoughtful persons in the country to act contrary to the principle of Swadeshi during marriage ceremonies is tantamount to voluntarily inviting and taking upon one's own head, the curses of all learned, working, responsible and thoughtful saintly persons in the country. In the auspicious ceremonies such as marriages to violate the vow of the nation regarding the use of Swadeshi articles means precisely to create an ill-omen to the new Mangalsutra—foreign cloth, foreign sugar and

foreign unnecessary articles of luxury ought first to be dismissed from auspicious ceremonies. It is desirable that the Chudas "—I think that is the status of knowing the husband—the marriage state—" of the newly married bride should last for ever, therefore no wise man will like that the sin of delivering over the hands of our women into the hands of foreign goods should be incurred in marriages at least, by putting foreign bangles round the wrists of the bridegroom's mother. When the bride and the bridegroom and their friends and relations shall have accepted the Swadeshi vow in marriage ceremonies in this manner, then for the sake of the completion of the said vow in all its details, it is necessary that the money-presents given at least should go to the Paisa Fund and a due proportion of the saving thus made, owing to the vow of Swadeshi, in the expenditure regarding superfluous articles of luxury, to the Maharashtra Vidya Prasarak Mandali"—which apparently is an association for the spread of education in India—" This the persons taking a leading part in marriages must not forget." Gentlemen, let us deal with these articles, as, of course, we ought to do, as fair-minded and as sensible people. I quite agree the language there is extravagant. You may say the propositions laid down, to some of us, in that connection are absurd. I think if you will allow your mind to consider, I will not say exactly analogous cases, but cases that suggest themselves, even this extravagant writer may do so fortunately without malice. How many ladies are there in this country who think it is unlucky to be married in May; how many people avoid being married on a Friday; how many Irish women are there who would never forgive themselves if they were not married in Irish poplin? How many people are there all over the world who, when they are dealing with these domestic ceremonies, attach a grossly exaggerated importance, and to the minds of people who are not themselves concerned use the most extravagant language in maintaining the necessity and even the piety of maintaining home industries. I have said already in this matter that it is not part of the duty of an advocate to identify himself

with all the opinions of the client for whom he appears. You will not understand me to be offering any argument pro or con for it, but when I have heard Sir Edward Carson, for a very considerable part of his case, turning again and again and going over this agitation for the use of nothing but home industries and the exclusion of Manchester goods, and the vow that you will entirely and solely deal with the product of your own country, and all the rest of it, I must confess I thought I heard about the Court the echo of a policy and doctrine that some of us have heard before in another connection. What appears to be the fact about it from the evidence in this case is this. This Swadeshi movement is an extreme form of movement for the protection of home industries—in a most extreme form, undoubtedly. Whatever may have gone to contribute to this power and influence, one thing beyond all question is that on which he has laid very great emphasis which was the proposal to carry out the partition of Bengal. There was a moment in this case some time ago now, when I rather understood it to be hinted from some quarter or other in the Court that after all, the partition of Bengal was fairly to be regarded as nothing much more important than a sort of Redistribution Bill in this country when a man's constituency is taken and cut into little bits. The partition of Bengal was one of the things, as Sir Edward Carson said in his speech the day before yesterday, which aroused a very large portion of Indian native opinion to a state of frenzy. Let me read to you Sir Edward's own words, which are at page 434, when he was speaking the day before yesterday: "Then come further Government complications. The partition of Bengal was proposed as an administrative improvement in India. I am not going to say whether it was right or wrong. There were certainly many discussions, and I listened to many of them myself in this country in both Houses of Parliament, and as an administrative matter for the better administration of Bengal it took a large place, it was proposed to divide it up and put it under different administrations somewhat as if it was two provinces. It seems to have excited the people there to a state of fury, which you and I can hardly

understand, because we cannot understand how mere administration being divided up in that way could be looked upon as a matter of such national importance as they attributed to it." Well, Gentlemen, if I may pause I will only say in regard to this matter, I have a little more imagination than my learned friend. I think I can understand how it comes about that a community which regards itself as an integral part of the whole, should be aroused to very considerable fury and indignation if proposals are made to cut a portion of it off from the rest: "But be that as it may, there is no question, it is admitted, everybody knows it, it is a public fact, that there was no question in recent years which added so much to the disturbances of India, for the time being, at all events, as the partition of Bengal." I think we may safely dismiss the alternative view that it really was a trumpery matter, with which you would not expect Indian people in another part of India to be troubled. You have been told in this case—the evidence is quite clear, that, though no doubt this movement for protecting home industries there arose, in different parts of that great dependency of the Crown and may in different places have grown up from slightly different causes, it gathered strength and force owing to these proposals in 1905, not in Bombay but a thousand miles and more away, right on the other side of India from Bengal, in Calcutta, to cut Bengal into two and divide it. Thereupon, as you are told, there arose this great agitation by which it was hoped to bring pressure—no doubt very severe pressure—upon the authorities and those who would have their part in deciding such a question by saying: "Very well, if you on your part are going to divide us, we regard ourselves as an indivisible whole and we will stoutly maintain our unity by using our own production and refusing others." I will not say a word whether in defence or in criticism of that policy. That has nothing to do with me. What I point out is that that is beyond all question on the evidence in this case, the impulse which made this Swadeshi movement important.

Mr. Justice DARLING: I think I ought to remind

you that there is a great deal of evidence which was given that the Swadeshi movement was only a stage in the obtaining of Swaraj, which was the complete independence and driving out of foreign power.

Sir JOHN SIMON: I am obliged to your Lordship, because I am anxious in this case to do my duty properly——

Mr. Justice DARLING: It was only to get the partition of Bengal, and there was any amount of evidence that Swadeshi was a movement, a kind of first step to make the British Government do something, and that you could not get English goods into India, that you might get German and French goods if they could not produce them there; and the object of it all was to obtain Swaraj, which was said to mean absolute independence, and to end in driving the British out of India altogether.

Sir JOHN SIMON: Whether or not that last view is borne out your Lordship will allow me to examine, but I quite recognise that it is very important I suggest to recognise that these two movements have a connection, and I am grateful to your Lordship. I would not wish in the least either to shut my eyes or ask you to shut your eyes to what is no doubt an important element in the case. What I was submitting to you for the moment on the evidence was not quite on that point. The point I was on for the moment was this. Here are these articles saying that at a wedding ceremony you should use nothing but native things, and saying it is inauspicious and unlucky and brings misfortune if you get married wearing a piece of Brummagem jewellery. I am pointing out to you that as a matter of fact it is what you may regard as a very extravagant part of this Swadeshian movement which shows that it received immense impetus from the proposal to create the partition of Bengal. Gentlemen, you and I in this case, while we must of course devote ourselves to our proper duties and not be swayed from our duty by outside circumstances, you and I in this case, I as well as you, have got to be careful that we do not use language or express a conclusion which is not arrived at strictly in accordance with our own strong convictions that the British rule of India is a great blessing to the world and to the natives as well as a

great pride to ourselves. I want at once to remind you that the partition of Bengal, attacked as it was in 1905, was not proceeded with and that always ought to be remembered. In 1911 the evidence was that at the time of the Durbar, no doubt partly due to the particularly strong feeling which was found to be aroused, those who on your behalf and my own helped to administer this mighty Empire, announced in the name of His Majesty, whose subjects we all are, proposals which have been so much criticised and attacked. I think it is only right that appearing here as I do for the Plaintiff I should make quite plain in the very next sentence that that is the course of events. It is between 1905 and 1911 between the time when the partition was proposed and when it was abandoned that you get articles such as these urging people in very strong terms to behave like these Hindus and at their marriage ceremonies to use home things. There is a good deal of evidence in this case that the Swadeshi movement, in its turn a gathering force no doubt as it went, was a movement which linked itself with what my Lord has referred to as Swaraj. The actual lengths to which that went and the extent to which it was calculated to undermine the better government of India, is matter on which you have to form your own opinion. I do not think that the Plaintiff accepts at all the view that the object which he had in view went to these extreme lengths. You may accept what he says or not as you please. I am entitled to call attention to this. I remember his being cross-examined considerably about it. Your Lordship will find that in re-examination he was asked this question. I will first of all take page 93. In answer to Question 301, which is: "The Swarajya is a form of self-government?" the answer is: "Yes, within the empire." Then: "That you advocated?—I advocated it, meaning self-government within the empire. Q. Is it true that you designed it and used it to represent absolute independence?—No, that is not correct." Then in re-examination on the 6th day, at the top of page 266, Question 2477, I put the actual question to him: "Was the partition of Bengal as proposed in 1905 carried out?—No. It was carried out for a time, but was cancelled afterwards in 1911 or 1912, I think, when

His Majesty went to India. (Sir Edward Carson): Are we going into that, my Lord? (Mr. Justice Darling): I should think we have gone as far as we are going. (Sir John Simon): In that connection you have told my learned friend, Sir Edward Carson that there was Swadeshi in Bengal?—Yes, they began to use Swadeshi in Bengal as a political weapon in order to bring pressure on Government. The movement started in Bengal. Q. Had you anything to do with that?—We approved and the National Congress approved. Q. What I want to understand is this: Had you anything to do with starting that in Bengal?—No, I had nothing to do with starting it. Q. Was the Swadeshi movement in Bombay"—that is to say on the Western side of India where he was—"at first a political movement?—No. Q. What was it?—It was an industrial movement intended for the protection of native industry; it was an economic movement." Then Mr. Justice Darling pointed out to me that this was a matter with which the Cobden Club might be very well compared. I quite remember your Lordship was pointing out that sometimes an advocate can come across an economic principle upon which he has not been convicted which in another connection is entirely sound. There is a passage I know where Mr. Tilak repeats that. I am anxious not to desert the plan I have adopted because it leads to brevity and, I think, to clearness. I say now if you will turn back to the third libel on page 53 you will see what there is to be said about it. My submission to you is that whether you approve, or whether you do not approve of people advocating that a bride at her wedding when she desires to have good luck and behave with due regard to her religion will wear home-made articles, that is not a conceivable justification for saying of Mr. Tilak that: "many subscribed from fear of the lash which he knew how to apply through the Press to the tepid and the recalcitrant"—not, I should have thought that a description one would usually give to the parties to a wedding: "just as his gymnastic societies sometimes resolved themselves into juvenile bands of dacoits to swell the coffers of Swaraj." Let me say once and for all, Gentlemen, that it appears to me with great respect, and I submit to you, and I hope it will appear to you, that even supposing

the Defendant can point to the fact that somewhere or other in India some reprobates, and boys mostly, were convicted of theft in 1910, even though he goes to the length of proving with the assistance which Sir Valentine Chirol has in this case received from the authorities, because he has been actually able to produce their conviction and to offer to read their confession—it is a thousand miles away from the point of this case to say therefore that this libel on Mr. Tilak is proved. It may very well be that it is a common feature of many political agitations, most of which no doubt go, as undoubtedly Mr. Tilak's went, to great lengths, that you will find sporadically here and there some trouble or some criminal action which is not fairly to be traced back to that definite cause. Only to-day—I refer to it because it is a matter which must be well within your knowledge and observation—we are all standing aghast at the dastardly attempt that has been made on the life of one of the most distinguished and powerful figures at the Peace Conference. Surely nobody is going to say that because French newspapers, some of which are violently critical of Monsieur Clemenceau, and capable of going to very great lengths—nobody will say: "There you are; I knew what would happen if so and so makes these violent attacks upon him." Gentlemen, you must in this case, if you want to do justice here, determine that you are not going to treat Tilak as condemned in these matters merely because you find there has been in some instances to which your attention has been called violence or crime committed in this place or that. You must demand a connection, and if you get a real connection such as might justify the accusation which this book in fact makes, that is a very different matter. I say, Gentlemen, therefore, that on this libel the thing really is as plain as a thing can be. You will judge of the gravity of it in all the circumstances of the case, and you will award such damages as in all the circumstances of the case you may think right, but to regard it as a justified libel is, in my submission to you, a thing you can hardly do.

Now, Gentlemen, I come to a very troublesome one, and that is the Tai Maharaj, which is No. 4, and I will

deal with it briefly. I will give you the references in the book on this, because there are two references. There is a reference in the text of the book, and also a reference to a note in the appendix. The references are these: At page 49 you will find the passage in the text of the book. At page 340 you will find the note numbered by the number 5, which is referred to in the earlier passage: "For three or four years the Tai Maharaj case, in which, as executor of one of his friends, Shri Baba Maharaj, a Sirdar of Poona, Tilak was attacked by the widow and indicted on charges of forgery, perjury and corruption, absorbed a great deal of his time, but, after long and wearisome proceedings, the earlier stages of the case ended in a Judgment in his favour which was greeted as another triumph for him, and not unnaturally, though, as recent developments have shown, quite prematurely, won him much sympathy even among those who were politically opposed to him." Then I will save your time and the time of all of us by not reading it now, but I would like you to keep your finger on the page because I am going to call attention specifically to the language with which the note concludes. After setting out what purports to be some sort of summary of which Mr. Justice Chandavarkar had said, there is in the last three lines added something of which Sir Valentine Chirol is the sole author. There is no question here of copying what anybody else has told him, Sir Valentine Chirol is pleased to add three lines here: "Mr. Justice Chandavarkar is a Hindu Judge of the highest reputation, and the effect of this Judgment is extremely damaging to Tilak's private reputation, as a man of honour, or even of common honesty." I shall have to say a word about that before I deal finally with this troublesome fourth libel. Gentlemen, I want to make two observations in the first place about this Tai Maharaj libel. The first is this: You will observe, as no doubt Sir Edward Carson conceded, that it stands in a very different position from the other libels in the book. The book is about Indian unrest. It is about the subject of those personalities and influences and causes and conditions which have led to a situation in India causing all of us anxiety. And, therefore, so far as the subject-

matter of the book is concerned, and whatever may be said as to the accuracy and truth of what is put in it, it is not an unnatural thing that the book should deal with such things as Mr. Tilak's supposed connection with the Rand case or the Jackson case or with gymnastic societies or cow-protection movements or collecting subscriptions for propaganda; but it is a very different matter when a distinguished journalist like Sir Valentine Chirol takes upon himself to write a book which, as he knows quite well, is going to contain a great deal of injurious matter about Mr. Tilak—it is a very different matter when writing a book about Unrest to say, by the way, "he cheated his ward and behaved not as a man of honour or even of common honesty with regard to his trusteeship." It takes a great deal to justify that, because you see it is not any part of the general subject-matter of the book. We will see in a moment what he writes. It is a very serious thing when you are writing a book on some public topic, discussing some large question which we are all of us entitled to take an interest in, to say in the middle of it something which reflects rightly or wrongly on the private character of a man in connection with the private discharge of his private duties. If you were to imagine a book written on some current political topic, say in the adjoining island, and there are a good many of them, it may contain some disputable matter which may be said to be the topic of the book; but suppose you introduce into the middle of it things which do not deal with the topic of the book, but which deal with a man who is very severely criticised in connection with his public action, and then you add: "By the way, Mr. So-and-So is a gentleman who is shown in a dispute about his private affairs and in the administration of a private trust, according to the views of the judge who tried him, to be a man wanting in common honesty." That is the first observation. Then the second is this: it stands apart from the rest of the case, because the Defence here seeks to set up a special answer to it which they cannot set up for any other part of the case. The answer is this, and it is pleaded with the greatest accuracy, such as you would expect from my learned friend, Mr. Eustace

Hills. What strikes me is that although he pleaded it with very great accuracy not the slightest attempt has been made to prove what he pleaded. What he pleaded was this: I want your Lordship to follow this for a moment because I place importance on it. He pleaded, in reference to this Tai Maharaj matter—it is paragraph 7: "As to portion of the words complained of, namely, from 'The Tai Maharaj case' down to 'Tilak and Khaparde,' the said words are a fair and accurate report." Now observe this: "A fair and accurate report of judicial proceedings publicly heard before a Court exercising judicial authority," namely, the proceedings in India, "and were published bonafide and without malice." Gentlemen, as I understand the law—of course, my Lord will tell you this—

Mr. Justice DARLING: Now, Sir John, it is as well to remember at this point, the Pleading you are now dealing with stops at the word "Khaparde," and does not refer to these three lines which end with the words "common honesty."

Sir JOHN SIMON: I am obliged to your Lordship; I quite agree that your Lordship is quite right. You, Gentlemen, will follow, if you turn to page 340, this special defence which is here set up, the defence, namely, that it is a fair and accurate report of judicial proceedings which is submitted by the Defence for your consideration in respect of not excluding the last three lines. The last three lines, of course, are not and do not pretend to be any portion of what the Judge said, or of what anybody said at the trial, and, therefore, they stand on a different footing. I want to point this out to you. You will see the distinction in a moment. My Lord will tell you the law, but as I understand it, it is this: you may defend yourself for having published in a book a fair and accurate record of judicial proceedings, but judicial proceedings are not the same thing as the Judgment of the Judge. You cannot defend yourself simply by saying "I have published a summary of what the Judge said in the case," still less an extract of what the Judge said if it is libellous. You can defend yourself by saying and proving "I have offered you a fair and accurate summary of the proceedings in

the case," which, of course, includes the evidence, but I do not know that the speeches of Counsel are a very important part of the proceedings, but unfortunately they take up a very considerable part of the time. The two things are quite different. You will understand I am stating this simply for the sake of clearness, though it will be for my Lord to tell you if I am not right. It is laid down by the highest authority in this country, by the House of Lords—by Lord Halsbury —not with reference to any particular case, but generally, that there is no presumption that the Judgment of the Judge, or some expression in the Judgment of the Judge, is a fair and accurate report of the proceedings. The Judge, of course, by that time very naturally has reached some view of his own, and in the course of expressing that view it is very natural that he should express, and not in the least improperly express, a very strong view, but that is not what is meant when the Judge says without more even if you set it out accurately it is on that ground privileged. On the contrary, it lies on the defence to show that the thing which they published is what Mr. Eustace Hills in this paragraph says he would show, namely, that it is a fair and accurate report not of what the Judge said, but of the proceedings at the trial including what the Judge said. The reason I put that is that Lord Halsbury has made it very plain indeed.

Mr. Justice DARLING: There is no doubt about it—none at all.

Sir JOHN SIMON: The actual sentence which I wanted to use was this: "Nor do I think there is any presumption one way or the other as to whether a judge's judgment does or does not give such a complete and substantially accurate account of the matters upon which he is adjudicating as to bring it within the privilege. If it is so, it must be proved to be so by evidence, and certainly not inferred as a presumption of law." Now, Gentlemen, just see how this stands. Not only is that so, but you have this situation. First of all Mr. Tilak who is in a better position to give evidence about the proceedings than people who were not there or concerned in them. Mr. Tilak at page 268, Question 2521, was asked by me this, with reference to that very passage: "Do you

accept that note as fairly and correctly representing the Tai Maharaj proceedings up to that date?" Do not understand me to be complaining because in 1910 Sir Valentine Chirol could not know what the Privy Council would decide in 1915. That is not the point at all. I accept it as at 1910. I assume there had never been any Privy Council reversal. I asked him: "Do you accept that note as fairly and correctly representing the Tai Maharaj proceedings up to that date?—No, that does not represent correctly, report even, correctly and fairly the proceedings." Then to make it clear and plain I go on and say: "I am not asking about the Privy Council but up to that date? —This does not fairly represent or report proceedings in that civil case or even the Judgment of Mr. Justice Chandavarkar." That is his assertion. The next thing I have to call attention to is this, that there is no dispute at all now—it was admitted on both sides that case before Mr. Justice Chandavarkar, Mr. Tilak had no personal interest to serve and that if he erred, as Mr. Justice Chandavarkar held he certainly did err, he erred because he, an old man, acting as a trustee for a dead friend, put a degree of pressure upon his dead friend's young widow as to the selection of her adopted son, which in the view of that Judge was excessive and improper, and which therefore prevented the adoption from standing as a valid adoption. But from first to last nobody in that case, in fact as Mr. Tilak has told you, ever suggested on any side that he was a person who had, to use a vulgar expression, an axe to grind. If any of you, Gentlemen, have the great misfortune to be a trustee and would also suppose you are the trustee of a young lady, and possibly a wilful young lady, you will have some notion as to whether it may not be a nice question sometimes whether it is necessary and proper to put pressure upon your trust. Mr. Justice Chandavarkar took an extremely strong view, that Mr. Tilak being an old man, had, together with his colleague, put far too much pressure on this girl, and he took the view, which was reversed afterwards and turned out to be wrong, that he was to that extent acting, no doubt from a mistaken zeal for his late friend, but acting in a way which prevented this adoption from standing as a good adoption, and therefore he declared that it was a

bad adoption. The point is that from beginning to end, it was never suggested that there was anything in what he did which indicated a want of honesty. I am not speaking of honesty as though it was completely defined by saying you ought to keep your hands from picking and stealing, but all I say is that if you, holding a position of a trustee, were told that you were not a commonly honest trustee, it would take some argument from Sir Valentine Chirol and Sir Edward Carson to convince you that really as a matter of fact all that meant was that you had shown excess of zeal. I point out to you therefore, and here I submit I am on very strong legal ground, that as a matter of fact there is not any evidence at all that what is here set out in this note and is vouched for as a fair and accurate report of the proceedings, is a fair and accurate report of the proceedings—not the least. In the second place, I point out to you that it is not capable of being disputed that the burden of proving that lies upon the Defence, but they do not prove it, even if they produce and read 20 times the Judgment of Mr. Justice Chandavarkar, because, as Lord Halsbury said, that is not the thing of which you can presume you have a fair and accurate report of the proceedings at all. As a matter of fact, it is quite plain—I wish to do Sir Valentine Chirol justice by saying this—that he made a dreadful muddle of it. You will judge for yourselves. Just look for yourselves at page 340. Is it not quite clear that that note put in this book by that gentleman, Sir Valentine Chirol—I quite agree he is not a lawyer, and he is neither the better nor the worse for that—is plainly put in the book under the impression, which, in fact, was a mistake, that the acquittal of Mr. Tilak, so long ago as 1904, on a criminal charge of perjury, which means telling deliberate lies, was set aside by the decision given by Mr. Justice Chandavarkar in 1910. It was not you know. If you imagine yourselves to be the trustee that I have suggested, and if you suppose that the young lady who is your ward goes to lengths,—I am glad to think in this country the position of a trustee might be worse than it is, because it is apparently quite common in India,—and you do put upon her pressure which is excessive, and, you are prosecuted at the Old Bailey for perjury,—it does not often happen

in this country,—and if in due course it was decided that the criminal charge of perjury was quite unfounded, would not you have a grievance if six years afterwards when there was a trial in the Probate Court with regard to some question about the Will, or in the Chancery Court upon some question about the ward, or it was said by people in a book: "Yes, you were acquitted I daresay of perjury in the year 1904 at the Old Bailey, but just see what has happened now in the Chancery Court," what emphasises it is this: the person who was responsible for this summary in this note I will assume knew so little about it that he actually thought that what the Judge was doing was dealing with an appeal against the decision of the lower Courts and was reversing the decision in the lower Courts. The decision in the lower Courts, as far as the perjury was concerned, as I have told you, from first to last was perfectly unaffected. The second thing which shows the same thing is this, and it is absurd to deal with the criticism I venture to make as to the assertion here that Mr. Tilak had been indicted of corruption and perjury and forgery as though I was wasting your time on some miserable technicality. I have nothing to do with Grand Juries and Bills of Indictment. In plain English, if you say of a man dealing with a legal matter that he has been "indicted," what I apprehend you mean and what I suggest you mean is that he has been put in the dock and been charged publicly with a criminal offence; sometimes it is called an information, sometimes it is called an indictment, sometimes it is called a summons, but that is a different thing from sending a man's name confidentially as a man in whose case the authorities are to consider whether he is to be put on his trial for this, that, or the other. Therefore, to put it at its very lowest, anything more reckless and anything more inaccurate than this account of the Tai Maharaj case cannot be conceived, and anything less to do with the subject of Indian unrest cannot be conceived. So if you look you will see you cannot say, as I suggest to you on the evidence, that he was indicted of forgery, perjury and corruption in any sense. The magistrate sent the matter in respect of those three

allegations in order that the authorities might decide whether he should be put on his trial. The authorities very sensibly said: "Oh no, you can try him on the perjury charge," and, in the first place he was convicted, but that was set aside, and he was declared to be wholly guiltless of any crime at all. In those circumstances where is there justification for writing that on page 49, or for putting this note at page 340? It does not matter whether Sir Valentine Chirol copied from somewhere in "The Times," or not that which does not purport to be more than a summary of the Judgment, and which therefore, as Lord Halsbury has pointed out, is not presumed to be a fair and accurate report of the proceedings, and which consequently in my submission to you and through you to my Lord is automatically shown to be without any defence in this action at all.

Then finally, Gentlemen, what about the last three lines? Sir Valentine Chirol, as he had come back to England and was revising his articles which appeared in "The Times" and while in the course of putting those articles in their final form for a book he had this additional bit of information, and so he put it in, a very dangerous thing for a man writing a book upon a public subject, in the course of which he has criticised a man very severely. He at the last minute put in his book something about the man's private affairs. What he puts in is a thing which, I submit to you, is plainly quite wrong. Why he put such things in his book about Mr. Tilak is obvious. He has formed a most violent view, a most extreme view, of Mr. Tilak's conduct in public. Up to a certain point it may very well be that you will agree with it, but that is neither here nor there. The question is where is the justification for saying of a man, even though he be a seditious person, even though he be a man who in his public connections exposes himself to most severe condemnation—where is the justification for saying of such a man that in the discharge of his private trust he showed himself not a person actuated with improper zeal, not a person who put such pressure upon a young lady that the adoption which she then made was an adoption which will not stand, but that he is a person who

in view of what is there stated may be regarded as a person wanting in the elements of common honesty. I submit to you with very great confidence that whatever may be said about other parts of the case, on that part of the case no answer whatever has been set up. On this part of the case let me remind you once again that it is not part and never has been any part of the contention of the Plaintiff that Sir Valentine Chirol in 1910 did not know that the Privy Council would reverse Mr. Justice Chandavarkar's decision. I know he did not know it, and the man is not to be blamed because he did not know. But that is not the point. The point is that in 1910 the admitted situation was that Mr. Tilak had done nothing which reflected upon his common honesty, though he had done something which brought down upon him the very severe condemnation of the Judge, right or wrong—wrong as it turned out—as to his conduct as a trustee, and that that is the admitted position Sir Valentine Chirol no doubt hostilely puts in his book, a thing which was blameworthy. Then he proceeds to do something which, in my submission to you, is much more blameworthy, and is quite inexcusable, and that is this: from that day to this he has persisted in that assertion, and he comes before you now and asks you to say, in reference to this fourth libel, that though he has used that in those circumstances about this Plaintiff's private connection in the matter of his private trusteeship, that he, the Defendant, is entitled to a verdict, and is entitled to go out and say: "There, I said that about Mr. Tilak, whom I have attacked so strongly for his public conduct in this book, and a British Jury says that I was justified in attacking him in his private capacity." Gentlemen, you will consider that, because that is a matter you will have to consider. If you take the view which I present to you on behalf of the Plaintiff, apart from any other question in this case, on that matter Mr. Tilak will be entitled to your verdict.

Now, Gentlemen, that exhausts the four libels, and I had already occupied some of your time, not in the circumstances very much on the two final matters, namely, the Rand murder and the Jackson murder, and I had pointed out to you before the Court rose yesterday some

of the very serious considerations, as it seems to me, which have not in any way been displaced by the very powerful and moving speech made on behalf of the Defence. They could not be displaced by such a speech, because the speech evaded dealing with any of them—you will remember what they were, and I am not going to go over the old ground. But here again, what I desire in concluding my address to you, in dealing with these two very serious remaining libels, is to call your attention quite accurately and naturally, and without any sort of passion, or, I hope, exaggeration, to what in fact is the situation when you compare what is said in the book with the proof in the case. Now, what is said in the book about the Jackson murder, and what is said in book about the Rand murder may, I almost think, be dealt with together, and though I deal with them together in addressing you now, I would wish to make it quite clear to you that I do not consent on behalf of the Plaintiff, to their being dealt with together when you come to deal with the issues and pronounce your final Judgment, and you will see why. Even if it were true that in respect of one terrible murder there could be traced a responsibility, not a direct, but an indirect and organic connection with the Plaintiff, it does not follow, and you would be doing him a grave injustice if you allowed it to follow that therefore you must find a connection with the second case. It is not the law in this country, and I hope never will be the law in any civilised country, that because a man has committed one crime, you may with impunity say he has committed two. Therefore I must ask you to deal with these matters separately, but for the purpose of referring to the book, it is quite convenient to deal with them together. Would you look kindly at pages 48 and then pages 61 and 62? At page 48 there is this passage which begins 11 lines down the page: "What Tilak could do by secret agitation and by a rabid campaign in the Press to raise popular resentment to a white heat he did." Then there is a sentence which, as has been pointed out to you, is not included in the complaints. "The 'Kesari' published incitements to violence which were put into the mouth of Shivaji himself." Then comes this passage, which is complained

of: "On June 22nd, 1897, on their way back from an official reception in celebration of Queen Victoria's Diamond Jubilee, Mr. Rand, an Indian civilian, who was President of the Poona Plague Committee, and Lieutenant Ayerst, of the Commissariat Department, were shot down by Damodhar Chapekar, a young Chitpavan Brahmin, on the Ganeshkind Road. No direct connection has been established between that crime and Tilak." Then there follows a passage not included in the Statement of Claim, but which it is convenient to read: "But, like the murderer of Mr. Jackson at Nasik last winter, the murderer of Rand and Ayerst—the same young Brahmin who had recited the Shlok, which I have quoted above, at the great Shivaji celebration—declared that it was the doctrines expounded in Tilak's newspapers that had driven him to the deed. The murderer who had merely given effect to the teachings of Tilak was sentenced to death, but Tilak himself, who was prosecuted for a seditious article published a few days before the murder, received only a short term of imprisonment, and was released before the completion of his term under certain pledges of good behaviour which he broke as soon as it suited him to break them." I will read you the other passage in a moment, but may I point out to you now how that bears upon a matter which I emphasised yesterday? Do you notice—I think you do notice, Gentlemen, I think I infer rightly that one of your number is noticing it now—that in that passage it is plain that Sir Valentine Chirol knew that Mr. Tilak had been prosecuted by the authorities after the murder of Mr. Rand, and he knew that he had not been prosecuted for any charge which was even remotely connected with that murder, or with anybody. He knew it, and, indeed, as you read it, you might almost suppose he was entering a protest against the supineness of Lord Sandhurst's Government because they did not prosecute Mr. Tilak on a more serious charge. You see how that adds to what I was putting to you yesterday, that before you can accept the view that Sir Valentine Chirol in this case has proved what he alleges about the Rand murder, you have got to get over this stupendous fact that the authorities afterwards certainly did not

proceed on that and on the contrary the authorities entirely disclaim any such suggestion and the Judge, in sentencing him, giving him a severe sentence as the man morally responsible for the crime, spoke of the good work he did through the plague, and took that into consideration. That is the one passage, and the other passages are on pages 61 and 62, which you had better look at at the same time. At the bottom of page 61 it says: "In reply to the magistrate who asked him why he committed the murder"—that is the murder of Mr. Jackson at Nasik in December, 1909—"Kanhere said: 'I read of many instances of oppression in the "Kesari," the "Rashtramat," and the "Kal" and other newspapers. I think that by killing Englishmen we people can get justice. I never got injustice myself nor did any one I know. I now regret killing Mr. Jackson. I killed a good man causelessly.' Can anything be much more eloquent and convincing than the terrible pathos of this confession? The three papers named by Kanhere were Tilak's organs. It was no personal experience or knowledge of his own that had driven Kanhere to his frenzied deed, but the slow presistent poison dropped into his ear by the Tilak Press. Though it was Kanhere's hand that struck down 'a good man causelessly,' was not Tilak rather than Kanhere the real author of the murder?''—that is the murder of Mr. Jackson. "It was merely the story of the Poona murders over again." That is the murder of Rand and Ayerst.

Gentlemen, I am not speaking in the language of polite compliment when I say that I have noticed, everybody in Court has noticed, that you gentlemen have been addressing your minds to this very serious part of the case with great care and seriousness during these many days, and I am not going to spend a great deal of time now in addressing you about it, but I want to call your attention to three or four considerations, not repeating and not arguing again those very important considerations which I mentioned last night. Now in the first place, the Rand case of 1897, a dreadful murder. It is, of course, quite legitimate that you should be invited to consider the very severe, harsh, complaining language which Sir Edward Carson brought before you with such

great power and skill in the course of his address about this part of the case; but you know, if you are going to do this thing, as I am sure you wish to do it, fairly, you must not only look at the extracts which Sir Edward Carson read to you. I myself, in opening the case to you for the Plaintiff, quite at the beginning had read many of those extracts to you. It is very difficult to know how long one ought to spend in opening a case when what you ought really to see is the witness in the box; but there are a great many things to be observed in the publication of the "Kesari" and the "Mahratta" about this murder besides the actual extracts to which Sir Edward Carson referred, and there are one or two considerations which you must bear in mind in order to form a fair judgment. These considerations I want to mention to you. Mr. Tilak was, as you have heard in evidence, a member of the Municipal Council of Poona, and a member of the Legislative Council, and was re-accepted in that position by Lord Sandhurst in June, 1907. I do not think, Gentlemen, in reviewing the evidence in your own minds, you will forget that Mr. Tilak did play in some respects an honourable part in connection with fighting the plague; the Judge who sentenced him for his seditious articles said so, and you will remember that the evidence stands quite uncontradicted, and I think you will agree he did not show a disposition to boast about it unduly—that at the time when a great many people in their alarm at this dreadful scourge, deserted this plague-stricken city, he was, and to all appearance quite honestly, like a good citizen, staying there and doing his best to fight the plague. More than that, he himself had a very difficult part to play, because the natives there—this is in one sense a thing which he could have proved from more points of view than one—were naturally greatly alarmed, and their social and domestic traditions were deeply outraged by what was likely to happen. If you want to go into this matter fairly, as I am sure you do, you must allow fair weight to the fact that in these newspapers he was urging that the methods of Western science for fighting the infection must be accepted. He was teaching the people who read his papers in what the system of protection

consisted; he even was teaching these people that it would be necessary to endure some things which would go very much against them. I called Sir Valentine Chirol's attention to the fact that such articles existed, and you will remember his answer was that he knew it, so that it is not a case where he was misled in that regard. That does not excuse a man, and no Englishman would for a moment imagine that it would, for inciting the people to murder; of course not. But you must consider in reference to these articles, whether or not a very considerable degree of criticism, even if adverse criticism, might not at any rate be explicable, having regard to Mr. Tilak's position and experience. You will not hear me, Gentlemen, in this case, and I think you would not hear any English Counsel in any Court of Justice at any time suggesting to you anything which is a reflection upon the service of that distinguished officer who was murdered, or these British soldiers who bravely lent a hand but at the same time it may be that a great deal of criticism, even vehement criticism, may be explicable even if it be not justified having regard to the kind of problem which had to be dealt with. It has been said of Mr. Tilak—and I venture to think that in this matter complete accuracy has not been observed—that the challenge which was thrown out to him is a challenge which he has had every opportunity of meeting, and that he has wholly failed to meet it. I want you just to see what in fact it was which he was asked to show as regards part of what he said. I quite agree, I wish for my part to make it quite plain to you—I quite agree that as the evidence stands in this case the assertion which he made appears to be without any justification, but he did in fact, if you look at the question and answer, say that as he understood it, matter in the Indian Plague Commission Report would be found bearing upon his view.

Mr. Justice DARLING: That is when he said "Horrible if untrue."

Sir JOHN SIMON: Yes, my Lord. It is in the evidence on the Fourth Day, at page 176. The passage he was being cross-examined on was at page 465, and as it seems to me, I am fairly justified in asking you to

consider this passage; the cross-examination, very powerful and effective as it was in itself, depended upon what one sees in the book, therefore it is better to see what it is which appeared in the "Mahratta" in this appeal to Lord Sandhurst. I do not know whether it is written by Mr. Tilak actually, but, at any rate, it appears in his paper at a time when he is at liberty, and I hope you will understand as I read it I am very far indeed for one single moment from preparing myself to justify everything that I find in the article. It is merely that my duty is to see that you take the view of it which you will ultimately take, after having had before you the considerations fairly to be put from both sides. In this passage, after saying some things which are very injurious and hard to justify: "'Mr. Rand never believes his soldiers can do a wrong. He has more confidence in the roughest of them than in a native gentleman of means and position;'" and so on, their comes this passage, which more particularly was relied upon in this connection: "Plague is now much better and there are decided signs of its abating within a short time. But the number of persons segregated every day remains the same. And why? Because the head of the segregating party thinks that it is his duty to send at least three or four scores of people to the segregation camp every day whatever the number of plague cases in the city may be. He must have his victims, and, like the rakshasas of old, he will carry them to the segregation camp in spite of their protests and wails. We admit that attempts are now and then made to evade the rules by concealing the dead or leaving vacant a house where a case of plague has occurred. But that is no reason why military officers should vindictively overdo their part to the great distress and suffering of the lower classes."

Gentlemen, you will believe that certainly I will never for an instant be supposed to support the proposition that these military officers were acting vindictively, but you ought to notice these two or three things: In the first place, as I pointed out to you last night, it is very easy to give a false emphasis to this sentence: "He must have his victims, and like the rakshasas of

old," because it is perfectly plain what is being referred to is something which I daresay is well known to the natives, something in their mythology. It is a little unfortunate, though I know quite unintentional, when Mr. Tilak was being cross-examined at Question 1385, the sentence was read: "He must have his victims." Then there is a full stop, and he is cross-examined as to whether it is not a horrible thing to say. That is not intentional at all, but I think it conveys a slightly false impression. The next thing you will notice is this. What is here being stated, and so far as it goes, you have no evidence that it is not true, and if it was true it is not in itself a reflection upon anything but the policy being pursued, is that plague is dying down, but that the number of people who the head of a given segregation party is day by day sending to the camps remains the same; I can quite understand that that might be a proper policy. You segregate people, of course, not because you are certain that they have got the plague, but because you are afraid they may have it.

Mr. Justice DARLING: Sir John, do you really mean that? It says: "Because the head of the segregating party thinks that it is his duty to send at least three or four scores of people to the segregation camp every day"—he fixes the number—"whatever the number of plague cases in the city may be."

Sir JOHN SIMON: I am not for a moment suggesting that the comment that is made on that is a comment which anybody could justify in a British Court of Justice; but what I am saying is—and, by the way, the head of the segregating party does not appear in the nature of things to be Mr. Rand; apparently it is the head of some search party—what I am saying is if you read the fact there stated before you come to the comment, I do not say it is true, because there is no evidence, but the fact there stated is one which is in itself, though the commentator here does not say so, a thing which may very well have been the situation, and though I am not here to grumble at all, I do call your attention to the fact that when Lord Sandhurst was in the box I put to him a question on that specific point—of course the fact that I put the question does not in the

least involve the suggestion is true, and must not be taken by you to involve that the fact suggested was true—Lord Sandhurst said that he did not personally deal with the matter. My Lord himself said if I was going to attempt to deal with this very serious thing here it would be better to have Mr. Tilak back in the box. I offered to put Mr. Tilak back in the box; and my Lord pointed out that if Mr. Tilak was coming back, in his view the only thing which Mr. Tilak would be entitled to deal with would be his assertion that for the sake of having victims people were being sent who were not stricken with plague into the plague camps. Now with great respect, that really is not an accurate statement by my learned friend of what he said. A plague camp and a segregation camp are very different things. The segregation camp is a place in which you put people whom you are afraid may develop plague. It is not a plague camp at all; and the perversion,. if I may call it, of this passage, not, indeed, the comment on it, which you may well think inexcusable, but the fact stated there, is very plain that, instead of representing it as a passage which states, although the plague is dying down, still to keep up a regular rotation, a given number of people day by day being put into segregation, it is represented as a statement that, although plague is abating, the officer charged with this anxious, terrible work is, for the sake of having victims—they have transplanted the mythological analogy plumb into the very policy deliberately pursued—"sending men who are not stricken with the plague into the plague camps." I am making no complaints, I am only pointing that Mr. Tilak must not be treated here as a person who was not, on his part, ready to go back and point to some matter which he, at any rate, thought would be relevant on the matter of fact. I hope I have made it entirely plain to my Lord, as I thought it my duty to do, that so far as I was aware, there was no passage in the report which could justify a suggestion that there had been anything vindictive or deliberate in the exposure of people who were known to be unaffected to the horrors of the plague. It is one of the instances which shows, on the one hand, that it is very easy in our indignation rather to exaggerate,

and perhaps, incidentally, even to give a false colour to a passage in these newspapers, but it is also important for a second reason, which I quite admit, and which I am sure must be pressing upon your minds, it is very important in showing that there was a great deal which was indeed very excessive and very reprehensible in the language which was used. Gentlemen, you will deal with the matter as you think right. I leave the Rand case by reminding you once again that if you take those articles as a whole you will find two different streams running in them, and it will not be right that you should give your attention solely to one and avoid looking at the other. You will find, on the one hand, articles in which Mr. Tilak had been, to all appearances, urging that his readers should accept much for the sake of putting this scourge down.

I put a series of questions to Sir Valentine Chirol at page 332 to ask him whether he did not know of it: "Had you before you, for example, any article on the page which urged upon the readers of the 'Kesari' that strict administration, search of their houses, and so on, was necessary?—I knew that at the beginning Mr. Tilak had written for a short time in that sense." I have read the articles to you in opening, and they are not all at the beginning: "Q. Or articles explaining to the native readers what the protection from such a disease as this was?—I knew at the beginning of this campaign he had written in that sense. Q. Or articles urging that one must not indulge in violence because one felt that the situation was hard, but must keep within the law?—I knew that occasionally Mr. Tilak did write precautionary sentences at that time. Q. Or articles expressing his confidence that the higher authorities would see that subordinate authorities did not go too far?—I cannot swear that my attention had ever been drawn to that particular point"—I have read one or two, and I will find one in a moment. "Q. articles pointing out that in Bombay searches wer conducted without the use of soldiers?—Yes, I d know that, because I made inquiries as to the reason for the difference, which seemed to me satisfactory Q. You satisfied yourself, did you not, that the fact was

that in Bombay soldiers were not used in that way?—Yes. Q. Do you remember whether your attention had been called at that time to the article, which appeared in the 'Kesari' immediately after Mr. Rand's death?—I think I had heard of that article. I have not the article before me. You mean the article in which there are some perfunctory expressions of regret." Gentlemen, is not it a little unfortunate when I was questioning Sir Valentine Chirol, not, I think you will agree, with any undue vehemence of tone, that he should always introduce into his answer some expression like "perfunctory expression" or "precautionary expressions." Would not it be better if Sir Valentine Chirol was, may I say, as frank in avowing the matters that are within his knowledge as I think I may claim in his evidence Mr. Tilak has been? He has avowed without attempting to excuse many things which must strike you as they strike all of us, as very extreme, and I regret very much that Sir Valentine Chirol, who is here seeking to justify what is in his book, should think it necessary to introduce these qualifications at every stage. I say: "Did you observe that at that trial both the prosecution and the Judge expressly and carefully disclaimed any suggestion that Mr. Tilak was responsible for the murder of Mr. Rand?—Yes." Now, Gentlemen, so much for the articles, I just want to say this word about the confession. As I pointed out to you, through the witness, instead of there being one confession of Chapekar there were two.

Mr. Justice DARLING: I do not think, Sir John, it is quite accurate to speak of these things as confessions, because in this country when we say "confession" we mean a voluntary confession. These are really examinations; it is question and answer; a different process altogether.

Sir JOHN SIMON: I am obliged, my Lord. Your Lordship pointed it out before, and I am sorry I had forgotten, but I was really using the expression for convenience; I quite agree it is not wholly accurate.

Mr. Justice DARLING: Of course, everybody knows that even in this country when confessions are voluntary, the man when taken into custody will have the opportunity of saying something; he is always given the

opportunity of answering the charge. He very often says: I was alone in this, nobody helped me; and then later on he will have another opportunity, perhaps before the magistrate, and he will then voluntarily say something different; he may say: I should never have got into this if it had not been for Jim So-and-so. But in this case it is even more likely, because they are not content with what he said the first time, they bring him up again and ask him questions.

Sir JOHN SIMON: And as I understand, my Lord, the prescribed practice in India differs from the practice in this country, in that at a certain stage it is legitimate for the magistrate to ask questions of the accused, and have his answers recorded rather in the way in which they do it, I think, in France, as distinct from the way it is done in this country—in fact, it is a duty. You will therefore understand, Gentlemen, I am not using the expression in a technical sense, but I will say there are two statements. As a matter of fact in the pink book the statement made first is printed second; and the statement made second is printed earlier, but what is most striking about it is this, and I do ask you to observe it, you may take it from me without reading the documents, which have been read so often, that although these two statements of Chapekar are not in all respects consistent, there is this consistency between them, that neither of them ever mentioned Mr. Tilak's name; neither of them ever mentioned the "Kesari"; neither of them ever mentioned the "Mahratta"; neither of them ever mentioned any newspaper whatever, neither of them suggest that it was the hand of Tilak or that the real author of the murder was Tilak in any form. I know what is attempted to be said in answer to that, because one can well understand that is a very disturbing fact for the Defence; they attempt to say, as it appears to me, with more ingenuity than plausibility. Oh, yes; we did not say in our book that the murderer of Rand did what the murderer of Jackson did, namely, mentioned Tilak's name. We did not say he did that, all we said was that he said he was actuated by his resistence to zulum or oppression; and we can point out the passages in the "Kesari" where zulum is denounced. Really that is very

ingenious, but it appears to me, with great respect, to be a great deal more ingenious than plausible. Anybody who reads this book which you have before you, can see perfectly well what the impression is which this book is calculated to give. Just look at the statement which I called your attention to a moment ago, the statement at page 48. I quite agree, and let me say it at once. The statement on this page following that sentence: "no direct connection has been traced between this crime and Tilak," is not itself set out in the Statement of Claim, and the reason is—and I am entitled to rely upon it—because of the reference made on page 62: "Like the murderer of Mr. Jackson at Nasik last winter, the murderer of Rand and Ayerst declared that it was the doctrines expounded in Tilak's newspapers that had driven him to the deed." Do any one of you twelve gentlemen really say, reading that, you would not understand it to mean this fellow, who struck down this poor man Rand; when he was caught, in his confession declared that it was Tilak; Tilak's papers; Tilak's doctrines, which had driven him to the crime. And the answer is he never did.

Mr. Justice DARLING: On what page is the confession of Chapekar?

Sir JOHN SIMON: The first one in order of date is at page 375; it is the statement which was given on the 8th October, 1897, the murder having occurred in June. The other one is on pape 371. · Gentlemen, I want you to understand quite clearly what is in the statement, because I am not seeking to shirk the point. It is quite true there is in the statement at page 376, after this wretched man says that he had been daubing the Queen's statue with tar and hanging a lot of shoes in a string round the neck of the statue—not things I should have thought that Mr. Tilak was teaching people to do; I am not aware of any article or suggestion in his paper that that is the way to drive the British out of India; a nasty trick played on the statue of the Sovereign by this boy. After saying that it is quite true, he goes on and says he returned to Poona, I think, about October. Then he says: "Then the operations for the suppression of the plague were commenced, and Mr. Rand was appointed the head of the Plague Committee. In the search of houses a great

zulum was practised by the soldiers, and they entered the temples and brought out women from their houses, broke idols, and burnt holy books. We determined to revenge these actions, but it was no use to kill common people, and it was necessary to kill the chief man. Therefore we determined to kill Mr. Rand, who was the chief." Do not let me be supposed to be obscuring that from your vision—it is there; but the whole point is this: who is there who reads these books who would not understand Sir Valentine Chirol to be stating that when this fellow was caught who killed Rand, so far from him having nothing to do with it, he himself avowed it was Tilak—Tilak's newspapers; Tilak's doctrines, which according to him, led him to commit the crime. It would not be particularly good proof, because people who are caught and make confessions or make statements, are not usually regarded as necessarily the most veracious of witnesses, but still it is not true that he ever did it, and that was the point, Gentlemen. It seems to me very much misunderstood, and you remember the question I put to Sir Valentine Chirol when I pointed out that even at the stage when his Defence was put upon the Record here, those who were setting up his Defence were solemnly printing in their Particulars what they subsequently had to alter in red ink, they were persisting in the statement. I presume at that time they thought it could be proved that Chapekar, as a matter of fact, had made such a statement. In that connection you will not fail to notice that Mr. Tilak, whether inevitably or not, is under this grave disadvantage. Sir Valentine Chirol is a favoured person, I do not say he is not entitled to the favours he gets, still less do I say that that very distinguished Indian official, the late Sir William Lee-Warner, was in the least departing from his duty when he allowed Sir Valentine Chirol to see material that he had, which came from official sources, but it now appears—it took a little time to get it—that Sir Valentine Chirol believed that amongst the material which he saw was an extract from, or some copy of a document, not before you and not before me, and not before Mr. Tilak, namely, something which is called the autobiography of this man, and indeed that it was before him is pretty obvious because it is from that

document that he has got that Shlok which he prints at the top of page 46 in this book; it is not a thing to be found in either of these confessions; where does he get it from, except from there? You will remember that the Plaintiff in this case, and those advising him out in India long before I knew anything about it, made application to the Government of India and said: there is a thing called the "Autobiography of Chapekar"; may we see it? Consider for a moment why the Plaintiff should want to see it. If the thing which Chapekar wrote when in prison was a thing which would hang Mr. Tilak, I wonder whether it might not in some form or other have been as available as was the extract from the Shlok at the top of page 46. Supposing that Autobiography, which the Plaintiff has never seen, of Chapekar, contained some statement which gave a perfectly different explanation of how he came to commit that murder, that would be very valuable to the Plaintiff. It is perfectly right, Gentlemen, that the authorities if they think that the public interest is involved, should come forward and say: We have this document, it is quite natural you should want to see it, but, in the public interest, this document must not be produced. I desire here to correct an error, I am sorry to say a vulgar error, and an error which ought not, in this country, to exist even in the highest official quarters. It is no part of the law that people can refuse to produce a document in official custody because it is what they call confidential. They have got to come and they have got to say with all the authority which their official position gives them, not indeed that the document is confidential, but that it is contrary to the interest of the State that the document should be produced. That is an experience which in another connection both I and Sir Edward Carson had before us, and while I am not here with all this material justifying, as it seems to me, the case of the Plaintiff going to spend time in grumbling, it must be quite obvious to you Sir Valentine Chirol is a very favoured individual, because the Autobiography which it is contrary to the interest of the State for Mr. Tilak to see is a document which a very important official, quite properly I do not doubt, allowed him to see, at any rate, a portion of. Therefore before you decide in this action as

regards the Rand murders, that Sir Valentine Chirol has established the connection between the Plaintiff here and that dreadful crime, I would ask you to weigh and properly assess the weight of those considerations.

Now last of all and I hope most briefly let me deal with the Jackson murder. It is long afterwards; my friend, Sir Edward Carson, using an apt metaphor, proposed to sail over the intervening years with the swiftness of an aeroplane and I do not know that I could honestly say that I observed his aeroplane travelled quite at that pace; perhaps he had a smash; but he paused a considerable time to deal with a matter which seemed to me to have the most remote connection with any issue which you have to try, though in itself it is a terrible event enough. It was that bomb outrage right on the other side of India at Muzaffurpur, near Calcutta, in the year 1908; a terrible thing, and there are articles which I am not going to read at this stage appearing in Mr. Tilak's papers amongst others commenting on that outrage. There again I can only ask you to take the fair and balanced view of the matter. It is very easy to treat some of these articles as being in a high degree seditious and reprehensive, and they were so regarded by the majority of a Jury in India when Mr. Tilak was prosecuted. He received a long sentence of imprisonment in respect of that, and served that sentence. That is not, therefore, an issue in the case, but at the same time if you are going to deal with the matter as a matter which has any bearing whatever on any of these six libels, just note in passing these things, first that, at any rate, the current of a great deal of criticism in those articles is to this effect: Now here is this bomb, how does this come about, what is the explanation of it, what is the cause of it, what is the cure of it. I am not going to attempt to justify that which has been condemned by the majority of a Jury in India, and that which I think probably you yourselves would feel open to very grave condemnation, but, nevertheless, as regards the topic on which the articles were written it was a natural one enough. The second fact is whatever else Mr. Tilak's papers did, there is not the remotest evidence, there is not the slightest suggestion or trace of any evidence that

they produced bomb outrages—none at all. He has told you that as a matter of fact the place where these outrages away there in the East of India took place was a place where his paper did not circulate. The people could not read it, the very A.B.C. of the thing was incomprehensible—double-Dutch to these people. He has told you further and nobody challenged it, that as a matter of fact right down to the time when the book was written there was no bomb outrage in the area in which his paper circulates. And the third thing is this, the last thing that I have to say to you: Down to the time this book is published in the area in which this paper circulates, the evidence is undisputed that no such thing happened.

Sir EDWARD CARSON: I do not want to interrupt my friend, but I think if he looks at the book he will see that the book itself does mention one. I purposely did not go into it, and I do not want to now.

Sir JOHN SIMON: What my friend is referring to is not before the Jury, but I do not want on that account in the least to stop it.

Sir EDWARD CARSON: I did not bring it in because it was not pleaded.

Sir JOHN SIMON: As a matter of fact my friend is quite entitled to say this. I did not know whether that had occurred at that time, it occurred apparently "last November," which I think is November, 1909.

Mr. Justice DARLING: Is it the passage which begins: "Other incidents"?

Sir JOHN SIMON: We need not make more of it, although it is not actually in the four corners of the evidence. You will see it yourselves on page 62. However, it does not alter my main point, which is this, on this Jackson libel all I need ask you to do is to put together the salient facts and see how far short they are from what would be necessary to justify the libel.

There has been a grave misunderstanding if I am supposed to say that the Plaintiff cannot be responsible because he was in prison on the day Mr. Jackson was murdered. Nothing of the sort. What I submit to you is this, and I will put it in the shortest form: first, there is no reference to, no comment on, no criticism of Jackson

in the Plaintiff's newspapers at all. It may be said in the case of Mr. Rand: You were criticising his administration, you were calling him a tyrant, sullen, suspicious—not a trace of it in the case of Jackson. The second point is this: Mr. Tilak's connection with Nasik is a connection the character of which is proved by the evidence which is before you, and he told you himself that he went there to the Mitra Mela in the year 1906, and that so far from instigating the wild spirits of Nasik to go in for extravagant action he spoke severely to some boys that were there and warned them and told them that the methods of constitutional agitation were the only methods which they must follow. That does not rest simply upon his testimony, because in the book of the evidence before the Commission which my friend Mr. Eustace Hills and I read to you the other day the Defence called a witness—not we but the Defence—a man named Gosavi, and at page 114 he says this: "In 1906 the Mitra Mela at Nasik invited Mr. Tilak for a Pan Supari party. I was present on the occasion. Some of the members of the Mitra Mela spoke on that occasion. Mr. Tilak replied to them. Q. Did Mr. Tilak warn them on that occasion? —He admonished them. Q. He told them to work constitutionally and legally?—Yes, he did." Then he also said: "Except for the Pan Supari meeting Mr. Tilak never visited the Mitra Mela and had nothing to do with the movement or objects of the Mitra Mela." I am entitled to point out to you that is not the evidence of somebody who the Plaintiff calls, because he is the Plaintiff's particular friend and can be relied upon to tell lies: he is a witness called away in India by the Defendants in their desperate attempts to prove some sort of connection between Mr. Tilak and this dreadful crime at Nasik. It does not stop there—this is the third point —I point out first there is never a single reference to Mr. Jackson, never a single comment, criticism, or attack upon him; I point out secondly Mr. Tilak's connection with Nasik is a slight one, and as far as it is he is warning them to work constitutionally and legally, and then here again there are two statements made by this murderer Kanhere, the first properly called his confession, at page 325 of this pink book, that is the very day on which he

was caught, December 21st, 1909, and there is the second confession at page 328, which is not, properly speaking, confession, but rather an examination before the magistrate. I am going, Gentlemen, to be very short about this, but the point is a very important one. The point is this: this murderer does in those statements give an account of how he came to commit this crime. He was a mere boy only 17 years of age, and I agree with my friend when he said just now anybody who could read this statement and not see the pathos and the pitiable character of it has lost all sense of what is really tragic. It is a terrible story, but what is his story? Is his story that he is a person who is acting in pursuance of some conspiracy of which Mr. Tilak is the head, or Paranjpe is the head, or the Mitra Mela is the head? Not at all. His story is this: in spite of the fact that Mr. Tilak had been there in 1906—as far as we know the boy was not there at all, he would have been then only 14 years of age—and had warned these people to behave constitutionally. This boy does not as a matter of fact come from Nasik. In 1909 he was got hold of by a little party of three or four people whose names he gives, most of whom were brought to trial, and he actually says in terms when asked why he should have struck at Mr. Jackson: "I had full confidence and faith in Karve"—one of the other people connected with the murder—"I got a message from him and therefore I committed this murder." Is not it shocking that this boy should go and kill a good man like Mr. Jackson simply because somebody sent him a message? "Did you know anything personally about Mr. Jackson?—I personally knew nothing about him. Q. If Karve had told you, would you have killed any sahib without making any enquiries whatever?—Yes, I would have killed; for I have full confidence in Karve, because he was at any rate more educated than I."

Mr. Justice DARLING: He said before in his first confession at page 327 from the time that Savarkar was sentenced he made up his mind to kill Mr. Jackson: "Since when did you get the idea of committing the murder?—On reading newspapers it appeared to me that Sahibs were practising oppression and that they

committed the murder of us poor people, I therefore formed this intention."

Sir JOHN SIMON: Then, my Lord, it goes on: "It has no connection with any secret society whatever." Your Lordship will perhaps contrast with that the passage on page 338, when he speaks of the secret league.

Mr. Justice DARLING: He is then asked: Were you a member of the secret society, and he says he had taken an oath.

Sir JOHN SIMON: Gentlemen, heaven forbid that I should be seeking to lessen the gravity of all the story you see here; I can honestly say I would be among the last to do so, but what I have to do in the discharge of my duty on this last section of the case is to point out to you those two statements are statements which, as a matter of fact, if you accept them, show that this boy was, in fact, actuated by a secret league, which secret league, amongst other things, got the necessary money by stealing some gold bracelet and pawning it, and so on, in the year 1909, and that he was striking at Mr. Jackson, this admirable official away there in Nasik, not because of anything which pointed to Mr. Jackson as a proper target for vengeance, but because Karve had said to him—Karve came from Nasik—that is the man to strike down; do what I tell you. He believed Karve, and he did it. What I have to put to you therefore is, that although it is true that he then goes on to say, as many a criminal has said before and since, that it is all caused by what he read in the newspaper; he nowhere confines himself to the "Kesari," he nowhere suggests that that newspaper had ever suggested to him, or any newspaper had ever suggested to him, that he should murder Mr. Jackson. He puts it entirely on the ground that there is somebody there in Nasik who was more educated than he was, and therefore he had confidence in him and did what he was told: "It appears to me that our people do not get justice from Sahibs. I have read many instances of oppression in the 'Kesari,' 'Rashtramat,' 'Kal' and other newspapers. I think that by killing sahibs we people will get justice. I never got injustice myself, nor anyone else whom I

know. I now regret having killed the kind Mr. Jackson. I killed a good man causelessly. I feel sorry for it."

Finally, Gentlemen, you will not have forgotten, and I do not think Sir Valentine Chirol and his Counsel will forget, that in the later evidence of this case a fact came out which was re-affirmed and emphasised by a question asked by my learned friend, Sir Edward Carson as to the fact that there were a great number of native papers, not merely in the Presidency of Bombay, but actually in the specific district with which we are dealing, the district of Poona. You will remember the witness said in answer to me—I did not exaggerate, I suggested 12 or 15—there were 150 or 200 in the Presidency. My learned friend re-examined him, and I suppose imagining that number was going to be reduced to something very small, inquired how many papers there were in Poona, and he got the answer 15 to 20. On the other hand you will observe the evidence is quite uncontradicted, that his paper the "Kesari," so far from being a paper which freely circulates in the Nasik district, is a paper of which he says a few copies may get there, but it is not the place where it is published or where it is edited, or the place with which it is in any way specially associated; it is 120 miles away, and a place where there are very strong local associations. And when this boy here in the course of these statements gives the names of these papers, so far from concentrating on anything which can be called Mr. Tilak's paper in any sense, he speaks of the "Kesari," the "Kal," the "Rashtramat," and other newspapers. In that connection you will observe the fact that he knows that list of papers contains within itself a strong indication that anything in the newspapers which influenced him appeared in the newspapers not before but after Mr. Tilak was sent to Mandalay. Why do I say that? Because it is in evidence before you that the "Rashtramat" is a paper that never appeared until after Mr. Tilak went to Mandalay, and if you are to regard this boy here who is very young and who is not likely to be reading newspapers many years before the time when he is

speaking or keep an impression other than one which is fairly recent—if you are going to regard him when he speaks of the "Kesari," the "Kal," the "Rashtramat" and other newspapers as referring to a bunch of papers he is reading more or less at the same time, inasmuch as the "Rashtramat" is one of them, it follows inevitably that the "Kesari" is not the paper edited and conducted by Mr. Tilak, innumerable extracts of which have been read to you in this case, but is a paper which he was not conducting, which he could not control, no extracts of which have been put before you in these proceedings at all the character of which is primarily to be put to the charge of those who were then conducting it, and the contents of which are wholly unknown to you.

Gentlemen, those are the reasons why I submit to you on the sixth and last head that the Plaintiff is entitled to come and ask for a verdict and damages.

I am not going, Gentlemen, to attempt to sum-up what I have thought it my duty to say or go over the ground: I will content myself with making this one final observation before I say one word, and one word only, on damages. My learned friend yesterday ended his powerful speech to you by saying that, of course, if Mr. Tilak made out his case he was entitled to your verdict, but that there was a great public issue involved here which he defined, and which he suggested would be present to your mind and you might properly consider. Well, Gentlemen, I very much question for my part whether a Jury of 12 citizens taken away from their business and asked to turn their minds, brains and sense to somebody else's quarrel for so long as you have—any more than a Counsel or Judge is concerned in the course of a case such as this with what may be supposed to be the ultimate consequences of this verdict or that. Your duty is to listen to the evidence and to pronounce in accordance with it. My duty is to address you on that evidence and endeavour as far as I can to see that the Plaintiff's case does not suffer from omission or mistake. But if we are going to consider wider aspects, I would ask you in two sentences to remember this: You may see as you read these papers that there are a great many fellow subjects of ours who are casting doubt upor the justice

and impartiality of the British administration. You and I believe from our hearts they are quite wrong. They do us very small justice if they do not recognise that the Empire on which the sun never sets is an Empire in which we honestly try to secure that any and every subject gets impartial treatment. They do very wrong if they imagine or teach others that that splendid service of civilians and of soldiers in India is there for any other purpose than that we may keep the peace, maintain order and secure the progress of that great Dominion. They do very wrong, many of them admit it, if they do not recognise—as to do Mr. Tilak justice, there are passages in his paper which do—that British rule has conferred immense benefits on them, but if we are going to consider the reaction in a case like this, just bear in mind that it is made a matter of complaint by the Defendants that Mr. Tilak should come here, to the greatest city in our Empire, the place, by the way, where he finds Messrs. Macmillan and Sir Valentine Chirol, he has the impudence to bring his action here in a British Court of Justice. I ask you not to take that into consideration; I ask you to say that any citizen of the Kingdom is welcome to come here whatever his record, whatever his race, whatever his colour, whatever his religion, and you will show him, even though he and some of his fellows may not have realised it before, there is one thing British institutions will secure for every subject of the King, and that is justice though the heavens fall.

Now, Gentlemen, it is because, in our submission, the Plaintiff shows he has been here libelled by these six libels, and because, in our submission, the Defence here has not discharged the burden which lies upon them, and which it is for them to prove, that on behalf of the Plaintiff I submit to you that he is entitled on each and every one of these six libels to a suitable sum in damages. Even if he was not right as to them all, that will not alter his right as to the rest. As to those damages, what I ask you to do is this: Mr. Tilak has pointed out in the letter written before the action started, which gives the clearest indication to Sir Valentine Chirol of the passages he objected to, that if he got a retractation, to which he thought he was entitled—

the retractation which that great Anglo-Indian newspaper did not hesitate to give when the question arose in Bombay years ago—if he got that he was not asking for damages to put in his pocket; he made a suggestion about a contribution to an Indian fund. That proposal has been rejected. Counsel for Sir Valentine Chirol has told you here at the end of this long trial that Sir Valentine Chirol stands by every word. He still says that he organised gymnastic societies with the brothers Natu for the purpose of creating a force which could wage war against the King. He still says that he used his newspapers for the purpose of blackmailing unwilling subscribers with the lash. He still says he started the Cow-Protection Society in order to provoke the Mohammedans. He still says that the proceedings in India in this private litigation showed that he was a man not even of common honesty. He still says that he is the real author of the murder of Mr. Rand, though the Government that knew all the facts elaborately disclaimed the suggestion. He still says he is the author of the murder of Mr. Jackson, although from first to last nobody can point to a single sentence in his paper which invites even the most unruly Hindu in the country to strike Mr. Jackson down. Very well. If in spite of that you come to the conclusion that the Plaintiff in this matter is entitled to damages, as he will be unless the Defendant has proved each and all of those matters, then what I ask you to do is to express that view by awarding him such moderate and reasonable sum as will indicate the fact that here in the central city of the Empire a man, be he ever so seditious, be he ever so mischievous, may none the less rely upon a Jury of those who, after all, are his fellow-subjects to see that he is not without redress when he is libelled by being accused of many grievous offences, and the justification set up is that he has been convicted of sedition and has written much which brings him grave condemnation.

Gentlemen, I do hope with all my heart—my duty here is a very grave one—I do hope with all my heart that nothing I have said in this case will for one moment be thought to transgress my duty here as an advocate. Your duty is a plain one; to see that the argument on

one side and the other is fairly weighed, and I submit to you when it is fairly weighed under the impartial direction of my Lord, you should come to the conclusion that the Plaintiff is entitled to your verdict.

(Adjourned for a short time.)

Sir JOHN SIMON: My Lord, on the matter to which I this morning called attention at page 62 of the book informally, because it was not in evidence in the case—the unsuccessful attempt to throw a bomb which is referred to at the bottom of page 62, perhaps, my Lord, I may be allowed to give your Lordship the reference to it. It is page 259 of the Shorthand Notes of the Sixth Day, Question 2431. The questions he was asked were these: "What is the part of India in which your papers circulate"? And then he says: "A. Maharashtra, the part of the Bombay Presidency. Q. A part of the Bombay Presidency with Poona in it?—Yes, round about Poona. Q. As a matter of fact, were there any bomb outrages at that time in that district at all?—No. Q. This book of Sir Valentine Chirol's was published in 1910?—Yes. Q. Right down to the time this book was published was there, so far as you know any bomb outrage of any sort or kind in the Bombay Presidency?—There was none in Maharashtra."

Mr. Justice DARLING: That is so, but in the Bombay Presidency there was this bomb-throwing. It may be as well to read this passage: "Other incidents besides the Nasik tragedy have occurred since Tilak's conviction to show how dangerous was the spirit which his doctrines had aroused. One of the gravest, symptomatically, was the happily unsuccessful attempt to throw a bomb at the Viceroy and Lady Minto whilst they were driving through the streets of Ahmedabad during their visit to the Bombay Presidency last November."

Sir JOHN SIMON: I am obliged to your Lordship. I am entitled, I think, to say this, and I can prove it if that is wanted, that Ahmedabad is 400 miles away and the script and language there are quite different from the language and script of the "Kesari," but it is in the Bombay Presidency.

Mr. Justice DARLING: Yes.

Summing-Up.

Mr. Justice DARLING: Gentlemen of the Jury, this action is brought by Mr. Tilak against Sir Valentine Chirol and Messrs. Macmillan the publishers of this book to recover damages for publication of a libel. Libel is an offence which is a part of the law of defamation. There are two kinds of defamation, there is spoken defamation, which is known in the law as slander, and there is written and published defamation which is known in the law as libel. The incidents are in many respects different, but they have this in common, that they are both wrong in that they defame character. The character of a person is something which, although it is incorporeal—you cannot see it or touch it—it is a possession, and a person's character is that which he has created for himself during the time which he has lived. It may be a good character, it may be a bad character, or it may be an indifferent character, and according as it is one or the other, so the effect of anything said against it or written against it must be judged, and when the Plaintiff complains, as he is entitled to do, and says that he is entitled to damages, what he means is that by reason of what the Defendant has written and published he has done damage to his character. He has defamed him, and he says that people will think less of him than they did before. Well, gentlemen, a difficulty now arises. The difficulty pressed Sir John Simon, because he had to say that in many respects the character of the Plaintiff is far from being above reproach. He has had to say—there is no getting away from it—that the Plaintiff has been twice convicted of sedition, once he was punished with 18 months' imprisonment; he was leniently treated, and when he had served 12 months he was released. You would think that was sufficient warning to him, but he committed the same offence again against the same Government in aggravated circumstances, and he then received a sentence of six years' imprisonment with transportation. He has said, and Sir John Simon has said for him, that if the Defendant had accused him of sedition and had given instances of his sedition he should not have made any complaint and

would not have made any complaint.

Gentlemen, as I was saying, the Plaintiff says that he has been guilty of sedition. There is no doubt about it. He has written or published many articles for years of his life which are seditious, and seditious in what sense? You have heard them read. Is it any exaggeration to say that the effect of them often veiled in the obscurity of language was to denounce the Government of India by the English, and to do what he could to bring it into disrepute. It is all very well to talk and say, "Oh, it is only sedition." What is worse than sedition except high treason? Do you know exactly where the line can be drawn between one and the other? For high treason it would be necessary to prove something more than you prove for sedition. It is necessary to prove an overt act, but where you get a country as Mr. Justice Davar said seething with sedition, how long a step is it to the other by a bomb or anything else you like which interprets into action that which the seditious newspaper has preached? So, gentlemen we are here face to face with this, that the Plaintiff who comes before you and says, "I have been defamed by the Defendant in this book," has to admit that he has been guilty of an offence which must damage his character to this extent, that anyone is entitled to say, "You are a seditious man," and he says, "that is true."

Now, gentlemen, you have read these articles which are complained of, and you have heard them commented upon, and you have heard Sir John Simon say that they contain attacks upon the private character of the Plaintiff with regard to the Tai Maharaj case where he was a trustee who was found to have oppressed a widow with regard to the adoption of a child, and so on. That may be. But when you come to consider the case if you consider it as a whole, bearing in mind that it is the incorporeal character of the man which is said to have been damaged, you cannot very well but ask yourselves (and it is for you to determine), whether the thing is a libel upon him, and whether it has hurt him. You can ask yourselves: "Well has it done him any harm whatever, and could it do him any harm with regard to those he cares about."

Sir Edward Carson yesterday put it, I think, rather fairly, although he put it picturesquely, when he said, "Supposing you have accused anyone of having committed the murder of a man, and in the same article in which you accuse him of having murdered a man you said that he had stolen his pipe, which was found in the murderer's pocket, and supposing that man brought an action for defamation, and said, 'You have injured my character, and I want damages against you because you have injured my character; you have said things against me, and have said that I murdered John Smith, and that I stole his pipe.'" Supposing you justify both, and you prove before the jury that he really did murder the man, and that he was a murderer, and he said, "But you said that I stole his pipe," is it conceivable that the accusation, true or false, that he stole his pipe would make anybody think the worse of him because somebody said he stole his pipe when it was not proved that he did so? So here there are many statements published which are said to amount to libel. They are of varying gravity. Sir John Simon has addressed you very carefully and very minutely as to those, and it cannot be pretended that they are of the same gravity as the others, and he has concluded his address to you as he began his opening of the case, by saying that you must be fair and valiant. He said: "Remember that the Plaintiff is not of your blood, he is not of your caste, he is not of your religion, and remembering all that, be fair and valiant." Gentlemen, I never thought with the experience I have had in the administration of English justice by judges and juries, that the danger was that because a man was alien to them in some respect, they would do him less justice. I have sometimes thought that they were inclined to give him a little more and to be so scrupulous lest they should be prejudiced against the man for this, that and the other reason, that they would, if anything, err the other way and say: "At all events, no-one shall complain that I was prejudiced against the man," and, in fact, the instinct of an Englishman is to be, to their faults a little more blind, if the people who are concerned are not of their faith, not of their religion and not of their blood, then where the person concerned is an Englishman like them-

selves. Gentlemen, when Sir John Simon was addressing you just now, there came into my mind, if I remember the words rightly, a passage in one of Lord Bacon's Essays where he says something like this: "Cosmus Duke of Florence had a desperate saying that you shall read that we are commanded to forgive our enemies, but you shall nowhere read that we are commanded to forgive our friends." Cosmus—the Cosimo de Medici, who was called father of his country—was absolutely right. There is always a danger that a generous-hearted man, or a generous-hearted people, may be more inclined to leniency to a person who had shown himself their enemy than to a person who is known to be their friend.

Now, Gentlemen, with those general remarks, I will say to you exactly what it is that the Defendant is sued for, and what his defence is. He is sued, as you know, for libel—Sir John Simon calls it six libels. It is not six any more than it is 16. You can cut it up into six, if you like. You can cut it up into fewer or you can cut it up into more, but what is set out is set out in the Statement of Claim all in one paragraph, setting out the libels. There are in the Statement of Claim six paragraphs, and the libel is contained in paragraph No. 3. It contains, Sir John Simon says, 10 libels; it may be it contains 50.

Now, Gentlemen, I must tell you what a libel is. A libel is anything written and published in writing or print, concerning another person which rightly understood and fairly construed tends to hold that person up to obloquy or dislike among those who know him, and is calculated to do damage to the character he bears. If it is that and if it is calculated to do him damage then, although he cannot prove that it has done him any damage at all in money, he is entitled to a verdict unless the defence that is pleaded is made out by the Defendant. Now, Gentlemen, I must tell you what, in law, the writing must be in order to be actionable as libel. It is not for me to say whether this publication is a libel or six libels or 10 libels or no libel. That is for you. Time was, on into the eighteenth century, when the question whether the publication was a libel or no libel had to be decided by the Judge at the trial. An Act of Parliament was passed which was introduced by Charles James Fox

which took away that duty from the judge, and passed it on to the jury. What was the reason? The reason was that judges were so strict in looking at the expressions used that they were very much inclined to take the strictly technical view, and to say that the words imputed amounted to a libel, when the country at large did not come to the same conclusion, and the jury are summoned here to these Courts from the body of the country, and it is for you to say, remembering the legal definition of libel, whether in all the circumstances proved before you this publication, or any part of it, contains a libel on the Plaintiff. Now gentlemen, although I have said this to you, it would be very difficult to say, in fact, Sir Edward Carson has not said that this is not capable of being considered as a libel. He has not said so. There are many paragraphs and passages which do reflect upon the Plaintiff and his character in such a way as to amount to libel, but it does not follow that everyone that is picked out by Sir John Simon does; there is no doubt that some parts of it undoubtedly do, and Sir Edward Carson has not argued for a moment that it does not. What does he say? He puts before you the defence of the Defendant, and the first defence is that all that he published is true. Now, gentlemen, in order to make that defence the Defendants have to prove it. If it appears on the evidence it does not matter who gave the evidence. If the Defendant can prove it out of the mouth of the Plaintiff himself he proves it as well as if he proved it out of the mouth of any witness or any document. So long as he can satisfy you from the evidence that it is true he has made out that defence. It will not do for him to satisfy you that part of it is true; it will not do for him to satisfy you that ninety-nine hundreths of it is true. If any part of it remains in your opinion a libel, and it is not proved to be true, why then as far as this defence goes you will find for the Plaintiff. But he has another defence. He says with regard to a great part of this matter, practically all of it, I think it is pretty general on the whole, that it is fair comment on a matter of public importance. Now, gentlemen, whether this is comment upon a matter of public importance or not is a question for the Judge to

decide. You heard me hold some days ago that as a matter of law I should rule that these comments made by the Defendant were upon a matter of public importance. That being so, now comes your duty. You must say, "Well, that being so, now we will read these comments. Are they fair comments?" Now I must tell you what is the law applicable to this. Fair comment means such comment as a jury may consider a man meaning to be fair could make in the circumstances. He may be a prejudiced man. He may be at the moment angry, but a man who is angry is not a man who is necessarily an unfair man. He may put the best possible construction upon the conduct of the person he is judging, but if in the opinion of the jury it is fair comment by a man who may have been indignant when he commented, the jury are entitled to say that is fair comment. I must tell you this further, gentlemen, that fair comment does not mean comment which you yourself would have made. Men hold very different opinions about very many things. You and I I daresay hold different opinions on many things. On many things you hold different opinions one from the other, but supposing you were to sit down and discuss some subject, it may be you would never agree, and yet whoever listened would say "yes, but the comments of both those men were perfectly fair." It may be that they got indignant, it may be that they raised their voices in the discussion, but they dealt with the subject, and they dealt with it fairly, and yet the person who listened might say: "I do not agree with either of them, I think they were both wrong, but their comments were fair." Now, Gentlemen, take a simple case. Take the case of a book. A book may be published, and it may be sent to many papers to be reviewed. One paper will write about it and say that it is a very good book; they might say that it is a very fine book, and another paper would say that it is not. One may give an example and say: "We consider this very fine" and another will give an example and say that this is the worst verse that has been written for a long time. They may be both fair criticisms but they cannot both be right. It is a matter of opinion to a great extent, but if an action for libel were brought the author would have

no right of action because he proved that what one man condemned another man praised. It would have to be left to the Jury. Is the comment that was made fair comment? A man is entitled to his own opinion and to his own likes and dislikes. Is it fair comment or was it made for some ulterior object? Was it made with what the law calls malice? Then the Jury may say that it is not the case, and therefore where it is real comment and not statemant of fact they are dealing with they may say "Yes, that is proved." I have taken the case of a book and you may equally well take the case of a picture. It is not so long ago that I tried a case in this very Court where a picture was said to be painted by Romney. I did not believe it was, from the moment I saw it, but a great number of people who were said to be great authorities came and said that it was and one of them went the length of saying that if God Almighty personally assured him that it was not he would contradict him. He was not contradicted in the manner that he would desire, but he was contradicted in this way that whereas he swore that he was quite certain that the thing was by Romney there was produced from the archives of the Royal Academy, of which this witness was himself a member, a sketch-book of Ozias Humphry which contained an original sketch of a picture generally attributable to Romney; but it was conclusively shown in evidence that Romney had had nothing to do with it and that Ozias Humphry painted it. The side that had alleged that it was a Romney called this and other people of whose names you read as critics, and so convinced were the people who called them that they gave up the case and said: "We cannot contest it any longer," and they themselves were satisfied that it was not a Romney picture at all. There there was comment, fair comment, and yet numbers of people were absolutely wrong and were demonstrated to be wrong. All I am saying to you is that the fact that they were wrong in their opinion does not prevent what they said there being fair comment. One said it was a Romney for one reason and another said that it was a Romney for another reason, but it turned out that they were all wrong. In our public

galleries there are many pictures attributed to this painter and to that, upon which those particular men never put one stroke of paint. People who live to be as old as I am will have the joy of seeing many pictures in public galleries attributed perhaps to two or three separate artists. I only say this to you, gentlemen, to show you that the test of whether comment is fair comment is not whether it is accurate comment, nor whether you agree with it or not. It may be accurate or it may be inaccurate.

Now, gentlemen, having done with that part of this case, there is pleaded another defence, and that is the part of the case which deals with the trial in the Probate action of the widow in the Tai Maharaj case.

It is said with regard to that that it contains a fair report of a judicial proceeding, and if there is a judicial proceeding, and a person writes a fair report of it he is protected, and it is not a libel. If it were otherwise the newspapers would not dare to publish what they do day by day reports of all that goes on in the Courts of Justice, because a witness may come and swear that a person robbed him, and the newspaper will put that in—that so and so came and swore that a person came up to him and robbed him or shot him with a pistol. The newspapers would report that day by day, and the case may go on as long as this one has done, and it may turn out in the end that the man charged did not rob the witness, or did not shoot him, and it may turn out to be all false. If the newspaper reports fairly the judicial proceedings they cannot be proceeded against for having falsely put that in because they have a good defence: "Well, all this took place in public, and in the course of judicial proceedings, and I reported it fairly," and so, when the judge sums up, dealing as he must deal with the facts of the case and the evidence as I am dealing with them now, it may be that he will make some mistake in the course of his summing-up. In that case what the House of Lords say is this: That if the Judge's summing-up is not a fair report of what has happened in the case up to then, then the fact that you report the Judge's summing-up and do not report the rest, does not justify you in saying: "Oh I

have given a fair report of the judicial proceedings, and it is said that there is no presumption that the Judge's summing-up is right or wrong." It is a matter of proof. The Plaintiff complains—of course it is all condensed by the Defendant—that what was written by the Defendant about him does not give a fair report of the case. What evidence is there to show that it does not? We have had the summing-up of Mr. Justice Chandavarkar, and we know what he really did say about the Plaintiff. What evidence is there that what he said about him was not warranted by what had gone before? I will use the Plaintiff's own words. He is asked by his own Counsel "Is what Mr. Justice Chandavarkar said to you a fair way of putting it. Do you complain of what he said about you. Is it right? Is it correct?" and he says "No, it is not." Of course Mr. Justice Chandavarkar gave judgment against him, and if you know a man who, when he is asked afterwards whether the judge was right, and he says "Yes, he was," well, gentlemen, you will make the acquaintance of a very exceptional man.

Now, gentlemen, I turn to this libel. The first part of it is in the book at page 43. "In 1893, some riots in Bombay of more severe character than usual gave Tilak an opportunity of broadening the new movement by enlisting in its support the old anti-Mohammedan feeling of the people." Just look at that. The Defendant says that is true. There were riots in Bombay, were there not? Is it fair comment to say that it gave Mr. Tilak an opportunity of broadening the new movement? Was there a new movement? You have heard the evidence. "In 1893, some riots in Bombay of more severe character than usual gave Tilak an opportunity of broadening the new movement by enlisting in its support the old anti-Mohammedan feeling of the people." Was there an old anti-Mohammedan feeling of the people? You have heard the evidence about that. You have heard what was the state of things in Bombay. If you look at the introduction by Sir Alfred Lyall in this book, you see that India had been invaded by the Mecedonian Greeks, the Romans, the Mohammedans, and the French before England came

and established British Government, and these people had conquered one after the other and some of the greatest conquerors, and the most severe were the conquerors of the Mohammedans, and we know from this very case, if we did not know it before, that the Mohammedans, having established their Empire, a Mahratta, named Shivaji, brought down the Mahommedan Empire in the Maharashtra by killing Afzulkhan—that is the first thing he did—he killed Afzulkhan, a Mohammedan general, and from that time Shivaji, towards the end of the 17th century, established the Mahratta Empire where the Mohammedans had ruled. In the Mahratta country the Peshwas ruled, and there were Brahmins who were a body who had the greatest possible influence in the country and there were the Mahratta governors. Who put an end to the Mahratta governors? The Mahrattas before the French and the English came into power, and so at last the Mahrattas, having brought down the Mohammedan power, in its turn fell before another power just as the power of the Macedonian Greeks and the Romans had given way before. Was there anti-Mohammedan feeling? It is for you to answer and not for me. What were the mosques and the temples? What were the bands that went by? What were the things you have had read to you about the movement? What were those stories about the Hindus throwing pigs into the Mohammedan's temple? Are those the pleasanteries of social intercourse, or do they show anti-Mohammedan feeling—anti-Mahratta feeling? What keeps these different peoples or these many races from flying at one another's throats but the power of the British Government? It is for you to decide whether you see libel there or not, and if you do, whether you are satisfied that it is true. But then it is complained that the whole of this is a libel. But just look at the words. It is most significant that the man who says: "That is a libel on me down to there, and there is a further libel if you begin at: 'he started an organisation known as the Anti-Cow Killing Society,'" omits this from his Statement of Claim altogether, and it is not complained of as a libel at all, that Tilak "not only convoked popular

meetings in which his fiery eloquence denounced the Mohammedans as the sworn foes of Hinduism." This gentleman published against him that "Tilak . . . . convoked popular meetings in which his fiery eloquence denounced the Mohammedans as the sworn foes of Hinduism." How can you account for the man omitting that and not complaining of it as being a libel on him? He does not say: "I did not convoke these meetings; I did not denounce the Mohammedans as the sworn foes of Hinduism." How do you reconcile it with his complaining of those words I have read to you down to there about the anti-Mohammedan feeling of the people. What further proof could you have of this anti-Mohammedan feeling than the fact that he himself is alleged by the Defendant to have convoked meetings which he addressed in fiery eloquence, denouncing the Mohammedans, and the Defendant having done that, he does not sue him for libel upon it. He goes on to say, "Now, there is another libel on me. He says: 'He started an organisation known as the Anti-Cow Killing Society which was intended and regarded as a direct provocation to the Mohammedans, which, like ourselves, think it no sacrilege to eat beef. In vain did liberal Hindus appeal to him to desist from these inflammatory methods.'" Now, it is said that some of these words are a libel, and particularly your attention has been drawn to this: "He started an organisation known as the Anti-Cow Killing Society." He says: "No, I did not. I did not start the society; it is an old society. People have long wished to protect the cows. The cow is a sacred animal to the Hindu." They worship the cow, as you have heard, and the Mohammedans do not. One can easily imagine you could not have a better ground for quarrelling than that, where you have some people worshipping an animal and saying: "It is sacred, and one before which we must bow down," and another lot of people saying: "No, it is not a sacred animal; I will knock it on the head and kill it." If you look at the proceedings on this very case on the Second Day, you will see there is an account of a meeting. At Question 83, Mr. Tilak was asked: "You did not appeal to yourself to desist from

something which you were not doing, did you ?—At one time a few men in Poona said that a meeting ought not to be held in order to express public opinion regarding Hindu and Mohammedan riots at that particular time. That is the only protest I had from some Hindu men in Poona." Then you come to Question 94 on page 79: "Was it about cow-protection ?"—this is about a proposed remedy and it goes on : " It stated that the Cow-Protection Societies were not the cause of these riots ; expressed an opinion on that point." Now the meeting was held. If you refer to the Fifth Day's proceedings, at page 246, you will see this. This is cross-examination and this is quoted from his own paper. " ' It is said that the educated Hindus have no real and heartfelt sympathy with the anti-cow killing movement because according to the " Pioneer " they have no objection to eat beef or take brandy. We confess we read this with considerable amazement and indignation. Some of the educated Hindus have, it is true, become denationalized, but it is sheer calumny to say that they have no objection for taking beef. It must be distinctly understood by our Anglo-Indian critics that the slaughter of innocent cows is opposed by every thoughtful Indian, not only on sentimental and religious grounds but for a very good political and economic reason.' Were you not at that time running this question of the Anti-Cow Killing Societies for political reasons ?—No, I do not think so. Q. Now will you take up the little red book again and I will give you one more chance of answering. Will you turn to page 43. What is it you complain of now that I have read all these things ?" Then there is a discussion in which I interposed and the matter went back to page 43. At one of these meetings there was a resolution read, and I think that is dealt with on page 81 in the Second Day's proceedings. You have to look back some distance and you find at the top of page 81 : " The third resolution was moved by you ?—The third resolution was moved by me. Q. 'This meeting is firmly of opinion that proper exertions for cow protection have not spoilt the minds of the Hindus and the Mussulmans nor is there any likelihood of their minds being spoilt thereby. In like manner this meeting thinks that the regrettable

riots which unfortunately have begun to occur of late, frequently take place in consequence of there being no manner of distinct orders as to how Government officials should always act in this matter, and in consequence of there being no distinct evidence anywhere as to what rights of what parties have been exercised from olden times in religious and social matters '"—and so on. Then it goes on : they moved that " ' the Government may be so kind as to institute an independent inquiry into the causes of such riots. ' Is that the resolution that you moved?—Yes. " Was he taking part in this movement? Was it an important question between the Mohammedans and Hindus? Further than that, a little further down he is asked this : " You have done your best to cause the two communities to live on friendly terms?—Yes. (Sir Edward Carson) : I think, if he makes an answer like that my friend ought to read the paragraph on page 53 commencing ' It is a question whether..... ' (Mr. Spence): ' It is a question whether if there is only one Mussulman in a population of five or ten thousand Hindus, the feelings of the ten thousand Hindus should be injured in order that the religion of that only Mussulman should be protected, and whether this justice should be called uniform and impartial. The suggestions of the Mussulman editor of Calcutta in this matter are deserving of consideration, but I have no time to enumerate them all here. The decision which the Allahabad High Court has given to the effect that the cow cannot be included among sacred objects deserves to be entered under this very head. Though such decisions may be given by anyone, still their result is just the same. That is to say, if such a decision is given against the Mussulmans they, too, get angry, and a riot breaks out. It is not that these results are wished for by the persons giving the decision ; nevertheless, if it produces a result of this kind, then the Government must make an attempt to cancel such erroneous opinions as far as possible. ' " Now, Gentlemen, I have read to you what it is on page 43 of which he complains as a libel. I have pointed out to you that there is a paragraph which one would think was most obnoxious to him, showing how he took part n this difference between the Hindus and Mohammedans

and all that, of which he does not complain at all. He does not complain of this as a libel when he says the Defendant says he started an organisation known as the Anti-Cow Killing Society. If it is insisted upon that it should have been said that he took part in the agitation but it is not shown that he started a society, then, Gentlemen, all I can say is this : it is for you to say whether you find any such difference between what he is proved to have done and what he is verbally alleged to have done as to amount to a libel upon him. Suppose a man is said to have started a society and it is shown the society was started before he was born, but that he took part in it, agitated in his favour, attended meetings and made speeches and so on, of course, it could not be said to be true that what was written was verbally accurate, but a verbal statement is not necessarily a libel. It is for you to say, when you look at that and remember what he did actually do, whether that contains any libel upon him, and if it does contain a libel upon him, then whether the libel is not proved to be true.

Now, Gentlemen, the next matter of which he complains is this—mind, I do not treat these as separate libels ; I treat them as all part of one libel—paragraph 3 of the Statement of Claim, which is said to contain the libellous statement. The next matter is this. These are the words, on pages 42 and 43 of the book, if you want to refer to them : " With the help of the brothers Natu, who were the recognised leaders of Hindu orthodoxy, he carried his propaganda into the schools and colleges in the teeth of the Moderate party. " Now stop there. He has been cross-examined about it. Did the brothers Natu help to carry the propaganda into the schools and colleges ? I do not think I will trouble you by reading all the evidence. You have heard it so often. You have followed it in the books. You see what the students did, and so on. You will bear it in mind, and when it is said that he carried it into the schools and colleges, what did he carry ? He advocated in his papers this propaganda. How could you more safely carry it ? If it got into the schools and colleges by means of his papers, those who read them assimilated his doctrines. How could you find a better word to express that than

that he carried them. It does not mean, and it cannot be fairly said to mean, that he went into each school or college himself and preached the doctrines by taking a bundle of leaflets and distributing them. It is for you to say whether it means that. Now, we have heard a great deal lately of propaganda. How has there been propaganda? There has been German propaganda in the United States, for instance, and Bolshevik propaganda in Russia. How has it been done? Some of it by word of mouth, that is to say, by conversation, but how is most of it done? Is it not by the subsidising of papers and getting people to read them? Is it not done by subsidising a paper that you ordinarily take in which you find all on a sudden has become a very pro-German paper? We know,do we not, that that is the way in which propaganda was carried on by the Germans, propagating that which would be injurious to this country? Would it not be far better to say, if that was so, that they carried their propaganda into America or Spain, or wherever it was, if they had done it in that sort of way? It goes on to say: "With the help of the brothers Natu, who were the recognised leaders of Hindu orthodoxy, he carried his propaganda into the schools and colleges in the teeth of the Moderate party."

You heard the evidence, the Plaintiff gave some himself, he said, yes there were people who did not like this continual glorifying of Shivaji, this continual holding of Ganpati festivals, holding ten where there used to be one and making them last days and days, and getting people to compose shloks and recite them. I am only summarising, you have heard it, Gentlemen, it is in your mind and you will act upon it. Some of the Moderate party did not agree with it. You have heard the cross-examination as to whether the Maharajah of Kolhapur, who descends from Shivaji was not opposed to it, and it turns out he was. You have heard the Plaintiff himself explaining how there were some people backward in this movement, and he considered them unworthy people who joined, great people, and so on, and they held back. Sir Valentine Chirol was asked whether the Maharajah of Kolhapur was not a friend of his from whom he got some information. No one would contend that the Maharajah

of Kolhapur, who is a descendant of Shivaji himself, went to one of these meetings; the Maharajah of Kolhapur is a loyal subject of the King. If these Shivaji and Ganpati were nothing but meetings for the cultivation of the mind and the exercise of the body and so on, as Sir John Simon says, when you get out of your bath you take exercise with some Indian clubs; very well there are clubs and clubs. The Shivaji club was one of which apparently the Maharajah of Kolhapur was not a member. If it was simply a society for glorifying the memory of a great man, who was more natural to be a member of that society and to take part in the meetings than the Maharajah himself? I leave it to you, it is for you to say, not me. "And proclaiming that unless they learnt to employ force the Hindus must expect to be impotent witnesses of the gradual downfall of all their ancient institutions." You have heard some of these articles read. What is the meaning of these articles, many of them in the Kesari? First of all go into Swadeshi. Sir John Simon says, "promote home industries." Is that a fair description of it? He says it is like the Protectionists in this country against the Free Traders. Is that the fair meaning of it? Do the Free Traders in this country or the Protectionists take this line, either of them? Do the Protectionists say, "use nothing but English goods, and if there are any foreign goods in the country throw them on the fire?" Do the children who have Protectionists parents go into their schools and make bonfires of things which have come from France or Germany or America or wherever else it is? These Swadeshi people put English goods on the fire. You remember the passage in which they were advised the great point was not to buy English things, use only the things produced in India, if you can get them, boycott others, but above all boycott the English; do not use the English things; if the thing can be got from Germany get it from Germany, provided it cannot be made in India, if the thing can be got from France, get it from France, if the thing can be got from Japan, get it from Japan, do not get it from England. Why? There was another movement at the same moment, and you had the evidence as to that of the Plaintiff himself,

Swaraj. He said, when he was in the box, that means self-government within the Empire. But did it mean only that; you have the articles. Swaraj means independence. How soon does independence within the Empire develop into a separate republic, with a parliament of its own? How long does it take? Of the people who say, "Oh, what I mean is Swaraj, or home rule, or whatever you call it, within the Empire," how many are sincere? You must not only have the evidence of a witness, you must always ask, when you hear evidence: "Do I believe it?" When you find a man saying: "It is quite true, Swadeshi was to promote Swaraj, Swaraj meant self-government, but Swaraj, in my mouth, meant self-government within the Empire, whatever other people meant by Swaraj"; when he says that in the witness-box turn to the articles in his own paper. It is not for me, it is for you to say: "I hear the evidence, I must ask myself, do I believe it." That you must do with everyone's evidence. We should be hopeless in a Court of Justice if because a man says a thing we are bound to believe it; we do not necessarily believe it, and if he has written something contrary then we are very apt to believe what he wrote and not what he said when he wanted a verdict. "The Hindus must expect to be impotent witnesses of the gradual downfall of all their ancient institutions. He proceeded to organise gymnastic societies in which physical training and the use of more or less primitive weapons were taught in order to develop the martial instincts of the rising generation." It is said "Oh, no he did not organise gymnastic societies," he was sometimes present at one or more, and there were young men who used Indian clubs and instruments, I have forgotten the name of them, some of them lances with a tuft at the end; he was present at those. He says that it is an unfair summary of what he did. "In order to develop the martial instincts of the people." You have heard the comment upon that, that it was just to exercise your muscles, and if you look at page 143 of the Third Day's proceedings there is this: Sir Edward Carson is referring to the green book, volume 2, page 1084. He says, "I am not going to read anything in it until I get a few pages on." I said, "look at the middle

of page 1084; this is what I mean." Sir Edward Carson read it from the green book. This is the article in the Kesari, I think: "The English have not even got as much generoosity as the Moghuls," they were the Afzulkhan people who had been the conquerors of the Mahrattas—listen to this :—"they have not even as much martial power," why talk about the martial power of the English—"as compared with the imperial sway of the Moghuls, the English Empire in India is extremely weak and wanting in vigour from the point of view of military strength." To whom did the Military strength of the Moghuls matter? It mattered to the Mahrattas who overthrew the Moghul Empire in that part of India. "The Emperor Aurangzebe exercised tyranny of various kinds over the Hindus from the point of view of religion though not from the point of view of the distribution of wealth; and his ten or twenty lakhs of troops also perished completely during his Deccan campaigns." What is the meaning of this contrast between the power of the Moghuls and the English, the strength of the Moghul army and the strength of the English? What is the good of the comparison—I can prove that the Hindus were strong enough to conquer the Moghuls and point that the Moghuls had more troops than the English?—"ten or twenty lakhs of troops also completely perished during the Deccan campaigns of ten or twenty years. Still the Empire of Delhi lasted for a hundred and fifty years—albeit in a hobbling manner, after his death. If the English army in India were to be confronted"—confronted by whom—"were to be confronted by difficulties similar to those which Aurangzebe's forces encountered, then the English rule will not last in India even for a quarter of a century after that. The principal reason for that is that the English remain in India like temporary tenants or birds of passage." Then the question is asked: "You told me you had nothing in your mind about driving the English out of India?—Yes. Q. It was not part of your policy?—No. Q. What does this refer to?—This does not mean that. This is saying of the English that they are like birds of passage in India." Then I said to him: "It is not birds of passage but this: 'If the English army in India were to be

confronted by difficulties similar to those which Aurungzebe's forces encountered then the English rule would not last in India even for a quarter of a century after that.' What is the word that is here translated into the English 'rule'? This is written in the Mahratti language?—Yes. Q. Was the word 'raj' in English 'rule'?—Yes. Q. That is not one or other of the officials. This is the whole thing?—Yes." The whole thing was the British raj; you remember it, Gentlemen. The English "as compared with the imperial sway of the Moghuls, the English Empire in India is extremely weak and wanting in vigour from the point of view of military strength. The Emperor Aurungzebe exercised tyranny of various kinds over the Hindus from the point of view of religion, though not from the point of view of the distribution of wealth; and his ten or twenty lakhs of troops also perished completely during his Deccan compaigns." How much is a lakh?

Sir ELLIS HUME WILLIAMS: 100,000.

Mr. Justice DARLING: Ten or twenty hundreds of thousands of Moghul troops during the Deccan campaigns, and the English are not as strong as Aurungzebe, and the words here are British rule, the British raj. It winds up with this. The British rule will not last; they will not last in the same circumstances 25 years, and then the question winds up: "that is not one or other of the officials." You remember he said it was written about the officials. "That is not one or other of the officials." The word is "raj." "This is the whole thing." Then the answer is "Yes." Ask yourselves what does a man mean who writes like that? What does a man mean who goes to Ganpati festivals, who celebrates Shivaji, who destroyed the Moghul Empire in the country of the Mahrattas; what does he mean by going to these things to which the Maharaja of Kolhapur, Shivaji's own descendant, does not go? What does he mean by writing like that; by writing what he did about Mr. Gokhale, because he apologised for having brought a false charge against the British soldiers? What does he mean by writing in the way he did of the loyal Princes of India who came over here in the Jubilee when he compares them with the beasts obeying the whip of the circus-

master? When you find Sir Valentine Chirol writing as he does here, and obviously suggesting that these Shivaji celebrations, Ganpati celebrations, and all the things that were done by the brothers Natu and so on, were done to develop the martial instincts of the rising generation, ask yourselves, do you believe that what he was doing was nothing but attending in an amiable way at something which Sir John Simon compares to a cricket match; or do you think Sir Valentine Chirol is right when he says this was done to develop the martial instincts of the people, and the martial instincts of the people were being developed not in order to promote the improvement of home industries, Swadeshi, not in order to promote Swaraj in the sense of Home Rule within the Empire, self-government within the Empire, but they were done to promote the martial instincts of the people with a view to treating the British raj, "the whole thing," as it is put, as they treated the forces or Aurungzebe and as they treated the power of the Moghuls? I am not going to trouble further with that paragraph, and what I have said there will apply to other paragraphs as well. Now, the libel complained of, goes on: "He"—that is the plaintiff—"must have had a considerable command of funds for the purposes of his propaganda." You remember the Paisa Fund, the paisa being a very small coin, you remember how people were urged, the smallest people, on every occasion to give money to the Paisa Fund. At a wedding, give to the Paisa Fund; if presents are given to you, do not keep them, give them to the Paisa Fund, and so on. "He must have had a considerable command of funds for the purpose of his propaganda, and though he doubtless had not a few willing and generous supporters"—Sir Valentine Chirol says no doubt he had a few willing and generous supporters—"many subscribed from fear of the lash which he knew how to apply through the Press to the tepid and the recalcitrant, just as his gymnastic societies sometimes resolved themselves into juvenile bands of dacoits to swell the coffers of Swaraj." There are two comments made about that. Sir John Simon, with great skill—there is no more acute or accomplished Counsel at the Bar than Sir John Simon—could not argue that "the lash" meant anything but

this, the lash which he knew how to apply through the Press. Of course, that means denouncing people in the Press. He says, Yes, I quite agree what it means, and I call attention to the articles which instigated people to adopt this policy of Swadeshi. How can "you expect ever a marriage to be happy if the bride's mother has bangles made by the English, bringing property to the British in any shape or form." Sir John Simon says, still there are many superstitious people who would not go to see you on Friday, who would not be married in May. That may be and if you think it is as harmless as that, why say so. But do you? What need was there if there are these people who would object to the bride's mother having a bangle made in England, what need was there if that is so, to tell them, if you do not take up this Swadeshi movement, and if you do not observe the Swadeshi vow, what is the consequence—death; the bride will not live long very likely, the husband will not live long very likely. Is it not a dangerous thing to advocate the production of home industries by saying: take an oath that you will use nothing else, and remember this, that if you break your oath the consequences are very likely to be death; and is not that a dangerous thing to say in a part of the world where hot-headed boys belong to secret societies, when he knows that some of them, those Nasik ones, are very likely to do desperate things, and where, as he himself says, he admonished them? Gentlemen, is there any wonder if hot-headed boys want admonishing if such articles as that about the necessity of keeping the Swadeshi vow are published? But it is always for you to judge, because the motives of men are so complicated, it is for you to judge, which is the genuine admonition and which is the admonition given for one's safety. You may think that the genuine admonition is when he said to the hot-headed boys: Now let us keep within constitutional lines, do not do anything outside; or you may think that was only done, I think the modern expression is, "to save your face," and that the real admonition was the admonition which taught, you are doing a dangerous thing, you must join the Swadeshi movement, my newspapers point out the necessity for doing so, if you do not join it you are a bad Hindu; if

you do join it you take a vow, if you do not keep your vow the consequences may be very serious, and I will not go the length of saying that they will not be death. Then you go away and you say to a lot of young men: Now you know whatever you do, do for goodness sake keep within constitutional limits. Now this which is complained of as a libel comes on page 49. "For three or four years the Tai Maharaj case, in which as executor of one of his friends, Shri Baba Maharaj, a Sirdar of Poona, Tilak was attacked by the widow, and indicted on charges of forgery, perjury and corruption, absorbed a great deal of his time, but after long and wearisome proceedings the earlier stages of the case ended in a judgment in his favour which was greeted as another triumph for him, and not unnaturally, though as recent developments have shown quite prematurely, won him much sympathy, even amongst those who were politically opposed to him." We know what the Tai Maharaj case was. It was complained of, bitterly complained of, by Sir John Simon a day or two ago, that there were those words, " he was attacked by the widow." He was attacked by the widow, there is no doubt about that, and indicted on charges of forgery, perjury and corruption. Sir John Simon said to-day, he did not found himself on the use of a word which would be quite proper to define a procedure which does not exist in India, the procedure of preferring a Bill of Indictment before a Grand Jury, and then trying a person upon the true Bill which becomes the indictment in the Court of trial. He said, I am not going on that. What is the point with regard to this? We know perfectly well that with regard to this he was attacked by the widow, he was not indicted on charges of perjury, forgery and corruption for the simple reason that the process of indictment in the strict English sense of the word does not exist in India, of sending up a Bill of Indictment before a Grand Jury. But what did happen? He was said to be guilty of perjury, forgery and corruption. This is a document, " In the District Court of Poona. Suit for revocation of Probate." So this is in the Tai Mahraj case. " Shri Sakwar Bai alias Tai Maharaj widow of," so and so,

Plaintiff, "against Tilak, Khaparde, Kumbhojkar and Nagpurkar, Defendants. Order under Section 476 Criminal Procedure Code." As to this the Defendant said he was attacked by the widow and indicted on charges of perjury and forgery and corruption. It says: "Whereas this Court is of opinion that there is a ground for enquiry into the following offences referred to in Section 195 Criminal Procedure Code and committed by Defendant Tilak." That is exactly what a Grand Jury would say; "the Grand Jury are of opinion that the following offence has been committed." "This Court, under the provisions of Section 476 of the Criminal Procedure Code, sends the case for enquiry to the nearest Magistrate of the First Class, and further orders that the accused Bal Gangadhar Tilak do give sufficient security. . . . The various offences disclosed in this suit"—that is the widow's suit—"as committed by accused Bal Gangadhar Tilak are more particularly set out in the Appendices A B C and D which are to be taken as part of this order, 4th April, 1902, H. F. Aston, District Judge." Then comes Appendix A: "False charge of an offence made with intent to injure (Section 211 Indian Penal Code) in that the accused Bal Gangadhar Tilak at Poona on or about the 20th July, 1901, falsely charged B. M. Nagpurkar with criminal breach of trust (Sections 406, 408, Indian Penal Code), in respect of ornaments entrusted to him and instituted or caused to be instituted criminal proceedings against that person in the Court of the City Magistrate Poona, with intent to cause injury to him and others. See Exhibit 23 C in Suit 112 of 1901 District Court." Appendix B: Between 29th June, 1901, and 25th July, 1901, at Poona. Fabricating false evidence for the purpose of being used in a stage of a judicial proceeding (Section 193 Indian Penal Code), in that the accused, Bal Gangadhar Tilak, between 29th June, 1901, and 25th July, 1901, with the purpose above-mentioned, made, or caused to be made, the following alteration and interpolation in the account of expenses of the Aurangabad journey, Exhibit 23 F., namely, erasing the words, 'Of Brahmins at the time when decision was passed of,' and substituting the words and false entry 'For' and for

making his verbal gift," and so on. If he did that that is forgery : erasing a true entry and substituting a false one is forgery. But it goes on, in case there is any doubt about it: "Or in the alternative—I am reading the Magistrate's Order—"Forgery Section 465 Indian Penal Code, by fraudulently altering"—a document; then it goes into it, how he committed the forgery. Appendix C: "At Poona on or about 15th November 1901. Corruptly using or attempting to use as true or genuine evidence known to be false or fabricated Section 196 Indian Penal Code. . . . And at Poona on 15th November 1901 corruptly used or attempted to use as true or genuine evidence the said document 45/90 which he knew to be fabricated." Appendix D: "At Poona in his deposition between 15th November 1901 and 3rd April 1902. Intentionally giving false evidence in a stage of judicial proceeding" section so and so. That is perjury. See what the Defendant wrote. The Defendant wrote that Tilak was attacked by the widow—was not he—and indicted. Sir John Simon said: I do not insist on the word indictment in the strict sense, it means charged, indicted on charges of forgery. Well, was not he? Perjury; was not he? and corruption; was not he? We know what happened; only the charge of perjury was proceeded with. The Magistrate tells the Magistrate of the first class: you investigate it and see whether there is not a charge of those things. The Magistrate investigated it, he was tried for perjury and convicted of perjury, and he was not tried for the forgery or for the corruption. Well, Gentlemen, that often happens. If there are three or four indictments against a man, and he is convicted of one, the prosecution say, it all arises out of the same matter.

Mr. SPENCE: He was never prosecuted in respect of those; the Magistrate made no order; it is different from not proceeding with them.

Mr. Justice DARLING: It was equivalent to this, if it had happened in England—no true Bill.

Mr. SPENCE: No, no Bill at all.

Mr. Justice DARLING: The Magistrate himself sent it to the Magistrate of the first class to investigate it. I resemble that to the sending of a Bill of Indictment,

the Magistrate did investigate those charges I have read to you, he returned no grounds for the forgery and the corruption, but he returned that he was to be tried for perjury, and he was tried for perjury and convicted of perjury, and afterwards upon some subsequent proceedings by way of appeal, that conviction was quashed in some form or other. What the Defendant said is "Tilak was attacked by the widow and indicted on charges of perjury, forgery, and corruption"—you have heard exactly what happened—"absorbed a great deal of his time, but after long and wearisome proceedings, the earlier stages of the case ended in a judgment in his favour." That is so. If what is meant by the earlier proceedings is these criminal proceedings, they did end in a judgment in his favour, because, though he was convicted of perjury, the conviction was set aside. That is all in his favour. What is meant? It is for you to say whether that is what is meant, not for me. Then those proceedings did end in his favour. "The earlier stages of the case ended in a judgment in his favour, which was greeted as another triumph for him, and not unnaturally, though as recent developments have shown, quite prematurely, won him much sympathy even amongst those who were politically opposed to him." What is the answer to that, "As recent developments have shown quite prematurely"? Why, the Probate action, that being what the Defendant calls the earlier stage, the Probate action came on to be tried before Mr. Justice Chandavarkar. We know that Mr. Justice Chandavarkar found against him.

Mr. SPENCE: It was tried before another Judge first, who decided in favour of Mr. Tilak, then there was an appeal to Mr. Justice Chandavarkar and another Judge.

Mr. Justice DARLING: Very well, it came before Mr. Justice Chandavarkar and the other Judge, and if "the earlier stages" refers to the Probate action, the civil action, then what is stated there is true, because the Judge before whom it came in the first instance, just as in the perjury case, decided in favour of the Plaintiff. Then it came before Mr. Justice Chandavarkar and the other Judge, and so Sir Valentine Chirol says, the

rejoicing over the result before the Judge of first instance in the Probate trial was premature, it won him much sympathy, but it was premature, and what he says he meant by that is this: at the time he wrote this book the case had gone to appeal to Mr. Justice Chandavarkar and the other Judge, and they had given judgment against him, not only gave judgment against him, but used very hard language about him. There is a long judgment of Mr. Justice Chandavarkar, and he gave certain passages which were taken from it. They were taken by the Privy Council. After Sir Valentine Chirol wrote his book the case went to the Privy Council, and the Privy Council reversed Mr. Justice Chandavarkar and the other Judge, and agreed with the Judge of first instance; in fact, years passed between the publication of the book and the reversal of Mr. Justice Chandavarkar. We know what Mr. Justice Chandavarkar said and what he thought, because Lord Shaw, who gave the Judgment of the Privy Council, used these words: "It is in these circumstances that their Lordships have viewed with surprise the charge which is made not only against the trustees, but against the whole body of the plaintiff's witnesses, ten or twelve persons in all. 'The account unquestionably to my mind,' says Mr. Justice Chandavarkar, 'given by the witnesses appears to be a true account of many of the series of events and a full account of at least one and that the most important.' This event is the taking of the child on the lap. Later on in his Judgment he states 'We are driven to believe that a considerable number of men of good position have conspired together to give false evidence.'" If you know anything about India and judicial proceedings in India, you will know there is nothing at all remarkable about that, about witnesses conspiring together to give false evidence, and even of having the most careful rehearsals as to how to do it, and then giving the evidence in Court. Anybody who knows anything about Indian procedure does not need to be told that that does occur as Mr. Justice Chandavarkar says he thought it did; there is nothing remarkable about it at all. Lord Shaw goes on: "The conclusion thus made is of the most serious

character amounting to a plain judicial finding of conspiracy and of perjury." So says Lord Shaw. Mr. Justice Chandavarkar finds Mr. Tilak guilty of conspiracy and of perjury. That was the state of things when the Defendant wrote his book, and Sir John Simon says he cannot blame him for not being able to prophesy what would be the Judgment of the Privy Council. Of course he cannot. Sir John Simon himself, who no doubt is much better qualified as regards the Privy Council, could not tell us himself what the Privy Council may decide to-morrow or the next day, and of course Sir Valentine Chirol cannot be blamed for not knowing what the Privy Council would decide about that four years after he wrote his book. That is why, says the Defendant, I say that when he succeeded in not getting indicted for perjury and corruption, but was charged with forgery, charged or indicted for perjury, was convicted, got the conviction quashed, succeeded in the Probate action before the Judge of first instance, he says, then I say that all the rejoicing was premature, because after all that Mr. Justice Chandavarkar gave judgment, and he said he had been guilty of perjury, corruption and a number of offences, and he gave his judgment in the words which were quoted by Lord Shaw. So, says the Defendant, at the time I wrote that, that was true. Not only so, but it is a fair summary of the judicial proceedings not only of what Mr. Justice Chandavarkar said, but a fair summary of what really happened in the judicial proceedings. Now the libel goes on. "The Tai Maharaj case came up once more in September on the appellate side of the Bombay High Court on appeal against the decision of the Lower Courts. It was contended on behalf of Tai Maharaj, the widow, that her adoption of one Jagganath was invalid owing to the undue influence brought to bear upon her at the time by Tilak and one of his friends and political associates, Mr. G. S. Khaparde, who were executors under the will of her husband, Shri Baba Maharaj." Nobody says in that that I have just read to you this minute that there is any libel at all; nobody says that there is anything untrue or anything that can be considered a libel. Then it goes on: "Mr. Justice Chandavarkar, in the course of his judgment

reversing the decision of the Lower Courts"—he reversed the Judge in the Civil Court, he did not reverse the Judge who tried the perjury case, that was done by somebody else on another appeal—"Mr. Justice Chandavarkar in the course of his judgment reversing the decision of the Lower Courts"—nobody says there is anything libellous in that, it may not be an accurate statement—"said that on the one hand they had a young inexperienced widow, with a right of ownership, but ignorant of that right and led to believe that she was legally subject to the control of the executors of her husband's will as regarded the arrangement of the estate which she had by law inherited from her son, prevented from going to Kolhapur even to attend a marriage in a family of relations, and anxious to adopt a boy from Kolhapur as far as possible." It is not contended that he did not say that. "In these circumstances they came to the conclusion that the adoption was not valid"—Mr. Justice Chandavarkar said that—"because it was brought about by means of undue influence over Tai Maharaj by both Tilak and Khaparde." It is not contended he did not say that. Now the Defendant says as to that, that all I wrote is perfectly true. That is one defence. In the next place it is a fact, it is an accurate report of a judicial proceeding. It is a summary, of course. If you are going to give an account in a book like this among other things of a Probate suit, you do not put in the whole thing, you write a summary of it just as anybody could write a summary of the Tichborne case or of some murder case. He says it is a fair accurate report of what happened; it is for you to judge whether it is or whether it is not upon the evidence which has been laid before you. Then Sir Valentine Chirol says this, and this is his own comment: "Mr. Justice Chandavarkar is a Hindu Judge of the highest reputation"—nobody quarrels with that, it is admitted he is a Hindu Judge of the highest reputation—"and the effect of this judgment is extremely damaging to Tilak's private reputation." Is it or is it not? The Defendant says that is quite true. He says the effect of that judgment—mind you it had not been reversed then—the effect of that judgment which says he has been guilty of

corruption and perjury, that he has forced this child upon the widow, is damaging to Tilak's private reputation. How could it be otherwise? Suppose they were able to sue Mr. Justice Chandavarkar, what would they say? They would say, "to charge me with all this is damaging to my reputation." If they sued the Defendant upon that paragraph about the Anti-Cow Killing Society, what do you think they would do if they came to the Judge who had given that Judgment which Mr. Justice Chandavarkar gave against them. The Defendant says all I have to say about that is perfectly true, and more than that, it is a fair comment on what Mr. Justice Chandavarkar said. He says it was damaging to Tilak's private reputation as a man of honour. Ask yourselves, is it untrue to say that what Mr. Justice Chandavarkar said was damaging to a man's reputation as a man of honour, when, amongst other things, Mr. Justice Chandavarkar said he had been guilty of corruption and perjury? How can a man of honour be guilty of corruption and perjury? I read the passage to you just now. That is what Mr. Justice Chandavarkar said had been going on. But the Defendant says Mr. Justice Chandavarkar's Judgment is extremely damaging to this gentleman's reputation as a man of honour. Then he goes on, "or even of common honesty." Sir John Simon said he did not read that to mean "honesty" in the sense that some people used it, as though honesty meant simply keeping your hands off other people's money. The word is a word of Latin derivation. When you say "Honesty is the best policy," what does that mean? It does not mean the best policy is not to steal; when you say "honesty is the best policy" you say it of a statesman or a millionaire. Why? Does not it mean this; conduct above-board—honest conduct? It comes to my mind as I speak, I think it is Burns, and for the benefit of Sir Edward Carson I will say he was a Scotsman; Burns I think wrote: "An honest man is the noblest work of God." Did he mean that the noblest work of God is a man who does not steal his neighbour's purse? Of course he did not. You would not call that man an honest man simply because he did not steal something; he might be a very dishonest man. You will understand the meaning

better if you know what the French mean by honnêteté and probité; and if you know Latin, as Sir John Simon does. So Sir Valentine Chirol, who is a literary man and a man of education, writes: "What Mr. Justice Chandavarkar said about him is extremely damaging to his private reputation as a man of honour or even of common honesty." It is for you to judge, not for me. He says to you: Mr. Justice Chandavarkar's judgment was damaging to him as a man of common honesty, because a man of common honesty, being a trustee for a dead man, would not get that dead man's widow to adopt a boy as her son whom she did not wish to adopt. That is what Mr. Justice Chandavarkar found the Plaintiff did. A man of common honesty, would not commit perjury in the course of legal proceedings. That is what Mr. Justice Chandavarkar found that he had done, and that is what another magistrate found that he had done, and convicted him of; a man of common honesty would not be corrupt, and that is what Mr. Justice Chandavarkar found, as Lord Shaw points out. How can a man be said to be corrupt and honest; if he could, then Robert Burns meant, "a corrupt man is the noblest work of God." If anybody did say that, it would be taken for a joke; Robert Burns was a Scotsman.

Now let us go on with the rest of it. This is said to be libellous: "What Tilak could do by secret agitation, and by a rabid campaign in the Press, to raise the popular resentment to a white heat, he did." It is capable of being a libel; it is for you to say whether it is. You have here what his agitation was, and how it was carried on, these festivals which he attended, what he wrote in his paper, you have not forgotten it, is that a libel; if you say yes, then says the Defendant, "I do not quarrel with your saying it is a libel, what I say is, it is true. More than that, I say it is fair comment on his publications and his conduct, and his publications and his conduct, he being a public man, are matters of public importance." Then he goes on: "The inevitable consequences ensued"—the inevitable consequences of the Ganpati and Shivaji festivals and so on. "On June 27th, 1897, on their way back from an official reception in

celebration of Queen Victoria's Diamond Jubilee, Mr. Rand, an Indian civilian who was President of the Poona Plague Committee, and Lieutenant Ayerst, of the Commissariat Department, were shot down by Damodhar Chapekar, a young Chitpavan Brahman, on the Ganeshkind Road. No direct connection has been established between that crime and Tilak." The Plaintiff agrees with that. He says no direct connection has been established between him and the crime. No, but says Sir Valentine Chirol, the inevitable consequences of what you have been doing ensued. Who was Mr.. Rand? You have heard Lord Sandhurst describe him: A humane man, and industrious official devoted to his work who was sent down at the risk of his life to Poona to see if they could stop the plague. You must have ringing in your ears the denunciations of Mr. Rand which appeared in the "Kesari," the Plaintiff's paper; I am sure I need not read them to you, many of them were read to you yesterday by Sir Edward Carson. What was likely to happen to Mr. Rand who was accused over and over again of having got up a great Zulum tyranny. What was likely to happen when in the "Kesari" there was that accusation made that those who were dealing with the plague and taking the people to the segregation camps were guilty of conduct such as was alleged against them? It has been read before but it stands out as a beacon may stand among the other points which have been brought to your notice in this case, so that I must read it again. This is written in the "Kesari," and the Plaintiff is being cross-examined about it. This is read to him, "'Plague is now much better and there are decided signs'—Just listen to this—'of its abating within a short time. But the number of persons segregated every day remains the same. And why? Because the head of the segregating party'—that is Mr. Rand——?—No. Q. His officer?—A subordinate officer? Q. —'thinks that it is his duty to send at least three or four scores of people to the segregation camp every day whatever the number of plague cases in the City may be. He must have his victims.' Now, Mr. Tilak, do you see the awfulness of that accusation; do you see what a horrible accusation that is?—I do not see." Sir Edward Carson

said, "read it again." He read it and said, "I have read it and if you like I will say what I have to say." Sir Edward Carson said, "I ask you this: Is it a horrible accusation to make to say that although the plague is abating the officer charged with this anxious terrible work is, for the sake of having victims, sending men who are are not stricken with the plague into the plague camps"? Sir John Simon made a criticism upon that because he said they were segregation camps. What other plague camps were there? they were segregation camps to keep apart those who had or might have the plague—quarantine. The Plaintiff's answer is "Horrible, if untrue." Then I said to him, just read to the end of the passage and Sir Edward Carson read it: "'And like the demons of old he will carry them to the segregation camp in spite of their protests and wails.' Is the demon the British officers?—It is a comparison." Of course it must be only a comparison because the devil never yet has held a commission in the English army that I have heard of; so it is a comparison, you put your construction on it, Gentlemen. "Q. Is the demon the British officer? ——(Mr. Spence): Like the demons of old." Of course the British officer was still existing, so Mr. Spence very properly calls attention to this that they are the demons of old, not the existing demons, so that they would not be present in the British Army. "(Sir Edward Carson): Is the British there meant to be represented like the demons of old as the Hindus understand?—Yes, by comparison." There you have it. Of course the actual demons do not hold a commission in the British Army, but there is no need why they should, because the people he meant may fitly compare with them, and that will do just as well. Then I said: "Listen to me a moment; that passage was read to you and you were asked if it was horrible, and you said: 'That is horrible if untrue.' Now I ask you is it untrue, or is it true?" Then the answer is, "It is true." Now, Gentlemen, here is a man who comes and asks for damages for defamation for something which will injure his character; can you imagine anything that anybody could think, or speak, or write, more damaging to the character of another than that charge against any British officer or anybody else

that when the plague was decreasing he determined to have, the passage runs, two to three hundred a day put into the segregation camps and that they kept up the number whether anybody had got the plague or whether he had not, two to three hundred a day put in simply to keep up the number in segregation camps. "Must have their victims like the demons of old." Sir Edward Carson said to him, "Have you got a single witness here to prove the truth of it?—I have not got any witness, but all these facts have been acknowledged in the Plague Commission's Report. Q. What Commission?—The Plague Commission appointed by Government." Then Sir Edward Carson said if you are going to have it you must produce the report. Then he said: "At all events there is no witness," and the answer is, "There were facts admitted in the Government's report." Sir Edward Carson had not got the Government's report, but the Plaintiff had got it. All this was said on the fourth day of this trial, and this is the eleventh day, and from that time to this the Plaintiff and all those who are advising him have had that before them. You remember I ruled, as he said it was in the report, and as he has got no witness here, the way to prove it is to produce the report, and if they can turn to any page to justify that statement they can read it to the Court. You have seen the book in the hands of Sir John Simon, you see it now; it has been thumbed from cover to cover, and not one single passage can they point to in that report which states any of these facts. This is the man who comes and says "I have got a good character, I am a man who can be defamed, I have been defamed by the Defendant and I want damages." Sir John Simon says to you and me, "Remember British Justice is in your keeping, and justice demands that a man who has made that charge and has done nothing to prove it, shall have damages against the man who made the charges which are set out in the Statement of Claim." I had got to the point that no direct evidence had been established between that crime and Tilak. This is Chapekar; it begins at page 371 of the pink book. This is the man who shot Mr. Rand. In the ordinary process in India he was examined, and there is a thing called his

"confession." He made one statement, and then later on he was further examined and made a further statement, and he said this: "I am about to make a statement voluntarily." He said "I went to Poona with the whole family. Then the operations for the suppression of the plague were commenced and Mr. Rand was appointed the head of the Plague Committee. In the search of houses a great zulum was practised by the soldiers, and they entered the temples and brought out women from their houses, broke idols and burnt pothis—holy books." How did he know that? The evidence before you is that the soldiers did not do it. Who said they did? Where do you get the very words, "in the search of houses a great zulum was practised by the soldiers?" Those are the words of the Plaintiff's own journal, the "Kesari." You remember that, I need not refer to it; in article after article "there is a great zulum tyranny being practised, the soldiers are bringing out the women," the soldiers are thieves. The evidence before you is that the soldiers did not do these things; cases were investigated and they had not done these things. You heard Lord Sandhurst give evidence about that. Therefore when this young man says that these things were done he cannot be saying what he saw, because you may come to the conclusion the things never took place, and if the things never took place he did not see them. How did he get it into his head? He came to Poona where the "Kesari" was published. "In the search of houses a great zulum was practised by the soldiers'"—what the "Kesari" said—"they entered the temples and brought out women from their houses"—that was said—"broke idols"—that was said, and so on. Then he said: "We determined to revenge these actions, but it was no use to kill common people"—no use to kill soldiers, that is—"and it was necessary to kill the chief man. Therefore we determined to kill Mr. Rand, who was the chief." Upon that Sir Valentine Chirol has written: "What Tilak could do by secret agitation and by a rabid campaign"—is that an accurate expression—"in the Press to raise popular resentment to a white heat he did . . . . The inevitable consequences ensued." You have to judge whether they did or did not; there is the evidence

of Chapekar as to why he acted, a description of what made him act. You may say, Yes, those are the things which are said by the "Kesari" to occur, although they did not occur, and you will come to the conclusion that Chapekar said this because of what he had read, and because of the atmosphere which had been created by the "Kesari." If a paper like the "Kesari" is preaching that a great tyranny is being exercised, a great zulum, and you find a man kill another with the words upon his lips, "It is because of the great zulum," you, as men of common sense, using your powers as Jurymen, may say "There is the connection between the two, and the Defendant was quite right when he said 'The inevitable consequences ensued.'" If you think so you will say so; if you think so you will find that this is a libel which is justified. Then he winds up by saying "No direct connection has been established between that crime and Tilak." If he had said a direct connection was established he would have said what was untrue. If a direct connection had been established between Tilak and Chapekar, of course Tilak would have been put upon his trial. Do you remember the story, I think it is in Æsop's Fables, of how in a battle one of the soldiers caught a man with a trumpet and was about to kill him? The man with the trumpet said, "Spare me. I have no sword, I have taken no part in this fight, I have not killed anybody." The soldier said, "You are the greatest enemy of them all, if it had not been for you with your trumpet the host would not have advanced against us, it is you who have incited the others to come and you are as guilty as the others, therefore I will not spare you." Æsop's Fables are fables; they are what the Plaintiff calls "Comparisons." "No direct connection has been established"; that is true, and if it means "But a direct connection existed"—well, it is for you to say whether that is true or whether it is not on the facts before you, the evidence of Chapekar and the evidence of the writings which the Plaintiff published.

Now it is complained that this is a libel on page 61 and 62: "In reply to the magistrate who asked him why he committed the murder, Kanhere said." This is the

murder of Mr. Jackson; you know who Mr. Jackson was, Jackson was a man who had not taken part in a zulum or anything of that kind, he was simply an English officer, and one of the best; he was a man who lived in India and had earned the name of "Pundit" Jackson, was one of the best friends the people had got, and had that childlike trust in them that it is said in this book many of the Colonels in the old regiments had when the Mutiny broke out. If you know anything about Mutiny, or if you have read the accounts, you will remember what a pathetic matter it was, how many officers to the last when regiment after regiment had mutinied, said, "I do not believe that the 20th or the 50th," or whatever it was they commanded, "will mutiny," and before the day was out perhaps those men were lying with their throats cut. So with Mr. Jackson; he was killed by Kanhere. Kanhere made statements which are called "confessions." What does he say? See how what is complained of as a libel goes on. "In reply to the magistrate who asked him why he committed the murder Kanhere said: 'I read of many instances of oppression in the "Kesari," the "Rashtramat," and the "Kal" and other newspapers. I think that by killing sahibs we people can get justice. I never got injustice myself nor did anyone I know. I now regret killing Mr. Jackson. I killed a good man causelessly.'" Now, Gentlemen, there is no complaint about that; Kanhere did say that, the plaintiff's counsel admit that he said it, it is simply copied from Kanhere's confession. Then this goes on as a comment upon it: "Can anything be much more eloquent and convincing than the terrible pathos of this confession? The three papers named by Kanhere were Tilak's organs." It is said that is a libel, they were not Tilak's organs. Sir Edward Carson has addressed you on that, it is for you to say what those words mean, not for me. "Tilak's organs" might mean papers which Tilak owned; that is one meaning. The "Kesari" he did own, the "Kesari" he edited, in the "Kesari" he wrote, for every word that appeared in it he was responsible, as he said. The "Rashtramat" he had founded before he went to prison, and it went on publishing articles while he was in prison; and as to

the "Kal" it is not shown that he had any connection with that, it was a paper run by a very intimate friend of his, Paranjpe, who, like himself, was convicted of sedition and sent to prison. When Paranjpe was charged the Plaintiff helped him with his defence, was in the room with him, and he has told you he went here, with Paranjpe, and went there, with Paranjpe. What is said about it is this: The "Rashtramat" and the "Kesari" were more or less his organs, the "Kesari" more completely than the "Rashtramat"; both founded by him, one edited by him, and so on. As to the "Kal," that was a paper of the same type, therefore it is spoken of as one of Tilak's organs, it is one that expressed the same opinions as Tilak, it is his organ in that sense; what Tilak was teaching or preaching the "Kal" taught and preached, Paranjpe, his friend, taught and preached. In the same way you might speak of the Unionist Press or the Radical Press. These are his organs, these are papers having the same views, Tilak's views; one of the papers belongs to him, another one he founded, another one is run by an intimate friend. Then it goes on: "It was no personal experience or knowledge of his own that had driven Kanhre to his frenzied deed, but the slow persistent poison dropped into his ear by the Tilak Press." That is what is meant by it. Sir John Simon, of course, being a man of judgment has disclaimed any such theory as this that because Kanhere committed the crime when Tilak was in prison, Tilak cannot be responsible for what Kanhere did. Sir John Simon has over and over again said that Mr. Tilak never wrote a word about Jackson. He did not. But Gentlemen, what has that to do with it. If a man publishes in his paper what you consider incited to violence, crime, and the murder of officials belonging to the British Government, what does it matter whether he names a particular official or not? It is quite true he never did mention Jackson. It is true that over and over again he named Mr. Rand, but not Mr. Jackson. If you come to the conclusion it was "the slow persistent poison dropped into his ear by the Tilak Press" then you will say whether you think that is true. You must use your own judgment as to how far newspapers affected

the opinion, especially the opinion of a young man like Kanhere. If you were to tell proprietors of newspapers and their editors that they had no effect at all upon public opinion, I should not like to say what they would think. I do not know what they write about me. Sir Valentine Chirol says: "Though it was Kanhere's hand that struck down 'a good man causelessly' was not Tilak rather than Kanhere the real author of the murder?" Then Sir John Simon says: "But, you see, Kanhere was prosecuted and hanged, and if Tilak was the real author of the murder, why did not the Government of Bombay prosecute Tilak and hang him?" Now, Gentlemen, how can you construe that to mean that the Government could have made out any case at all against Tilak for the murder of Mr. Jackson? Tilak's conduct was laid before their legal advisers, and their legal advisers advised that Tilak should be prosecuted for sedition. He was prosecuted for sedition, and convicted, because he wrote those things in his papers. If a man writes seditious writings, over and over again, so bad that he has two sentences passed upon him, the last of them being one of six years' penal servitude, and people read what he writes, and one of them commits a murder in consequence of what he writes in those papers, although it was useless to draw an indictment against a man, and accuse him as a participator in the crime as an accessory before the fact—that is all you could charge him with—although that would be absurd, is it unjust and is it untrue to say that he was the real author of the crime? Who was the real author of the thefts which were committed by Fabian Phelps? Mr. Fagin kept a school for thieves, and he had a kind of dummy on which he taught his pupils how to pick peoples' pockets of pocket-handkerchiefs, watches, and different things out of peoples' pockets, and the pupils went and did it. Mr. Fagin eventually came to a bad end. It is not like real life. If you were asked who was it deserved to go to gaol along with those pupils, you might say was it not the man who taught them? It is very difficult to bring it home. It might be pretty easy where there is a dummy, and there are pupils, but when it is all done by writing in newspapers and producing an atmosphere,

it is very difficult to bring them to Court and prove it. Can you wonder that the officials of Bombay did not advise that Mr. Tilak should be put into the dock along with Kanhere? I only mention this because Sir John Simon says: "How can you say that Mr. Tilak was the real author of the murder of Jackson when he never mentioned Jackson, and when you know that those who put Kanhere on his trial for killing Jackson did not put Mr. Tilak on his trial and say, 'you are as guilty as Kanhere.'" Sir Valentine Chirol says he is the real author not the perpetrator of the crime, and that he incited him to do it. Do you never in your own writing or conversation say, "Well, he is morally guilty? I know perfectly well I could not indict him; I know that no jury would convict him for want of evidence, but he is morally guilty." It is useless to indict him for the murder of anybody. As I said to you just now, the trumpeter struck down no one; he had not a sword; the man had no weapon, and yet as I said the soldier pointed out: "I am only a rough soldier." Could you say, "I give you punishment because you are morally guilty; if it had not been for you the other man would not have done it." What does Sir Valentine Chirol mean—for it is for you to construe these things, and not for me—when he says, "Was not Tilak rather than Kanhere the real author of the murder"? If Tilak had not acted in the way he did, and if he had not aroused the Hindus and glorified Swadeshi as to the plague, and if he had not put the worst construction upon everything they did if he had not taken this interest in the Ganpati and Swadeshi movements, and so on, this man would not have committed this murder. It is not for me to tell you what it means. If I did you would not be bound by it. It is only for me to put it before you. It is for you to form your own opinion as to what the Defendant meant when he wrote that, and when he says "What I wrote there is fair comment on what the Plaintiff has done." You have to say whether he makes out or whether he does not make out his plea. Now in order to arrive at that, let us see what Kanhere said.

Sir John Simon has said, "Kanhere killed Mr. Jackson, and it was nothing to do with Mr. Tilak.

Tilak never mentioned Mr. Jackson," but let us see what Kanhere said: I will read Kanhere's confession. He said: "'I questioned Ganu. Why are you killing Mr. Jackson causelessly? Why don't you kill Davar, who punished Tilak?' Then I said to him, 'If you are going to send me, I will first kill Davar's son; for then he will understand what grief on account of one's children is; because he has got Tilak removed from the midst of his children and has sentenced him to transportation for six years.' Ganu said, 'I cannot tell you anything just now.'" . . . It was after that discussion that he went and killed Jackson. You see his first instinct was to kill a man whom he knew had done an injury to Mr. Tilak. Then he goes on. Sir John Simon read some of this. "Did you know anything personally against Mr. Jackson?—I personally knew nothing about him. Q. If Karve had told you, would you have killed any Sahib without making any enquiries whatever?—Yes, I would have killed; for I have full confidence in Karve because he was at any rate more educated than I. Q. How did the idea of killing Sahibs first come into your head?—It appeared to me that our people do not get justice from Sahibs. I have read many instances of 'zulum (oppression) in the 'Kesari,' 'Rashtramat,' 'Kal,' and other newspapers." There it is. "I have read many instances of zulum (oppression) in the 'Kesari,' Rashtramat,' 'Kal' and other newspapers. I think that by killing Sahibs we people will get justice. I never got injustice myself nor anyone else whom I know. I now regret having killed Mr. Jackson. I killed a good man causelessly. I feel sorry for it. (Kashinath Tonpe shown to the accused.) This is Kashinathpant who is a Savkar at Yeola. Q. What do you know about Savarkar's Secret League." You remember Savarkar's Secret League was not unknown to the Plaintiff by any means. "What do you know about Savarkar's Secret League?—I read in the newspapers that there was Savarkar's Secret League. And it was in consequence of that that I asked Ganu about it."

Gentlemen, there you have the confession of an assassin and how he became one. Sir Valentine Chirol in commenting on this crime has said that no direct

connection has been established between the killing of Mr. Rand and Mr. Tilak. He said that "though it was Kanhere's hand"—in the Jackson case—"which struck down 'a good man causelessly' was not Tilak rather than Kanhere the real author of the murder?" Suppose you had been present and heard that boy tell that story and you were the jury who were trying that boy Kanhere, and he was sentenced to the gallows, as he was, if you had heard him say what induced him to do it, and what lead him to kill a man whom he had never seen and had heard him tell that story, what would have been your comment as to who was the man who had driven him to kill him. It is a question like that, that the Defendant asks you to answer, and that sort of question only. These are the last words complained of. "It is merely the story of the Poona murders of 1897 over again." That is complained of. Is that saying anything that is libellous? It was the story of a man who had been driven by seditious teachings to commit a murder. Chapekar killed Mr. Rand and Lieutenant Ayerst and Kanhere killed a man whom he had never seen before—a man whom he afterwards confessed to be a good man. He said what I have just read to you. The comment of Sir Valentine Chirol is that "It was merely the story of the Poona murders of 1897 over again." What is the difference except that Kanhere said much more plainly what induced him?

Now, Gentlemen, that is the end of the libel. The Plaintiff comes before you upon matters which I have now read to you and upon which I have made such comments with regard to the law and facts as I thought fair and proper. I have pointed out to you that it is for you to construe what is printed and not for me, and I have pointed out to you that it is for you to say whether the truth of the charges is established and whether they are fair comments upon a matter of public importance. It is for you to say whether that Plea is made out, whether the Plea is with regard to the Tai Maharaj case—that it is a fair report of judicial proceedings. I have pointed out all this for you to say whether this is true.

Now, Gentlemen, that brings us very near to the end of the case. It is necessary for me to say this to you as

I said at the beginning. This is an action to recover damages for injury done to a man's character. Damages are asked, and you have been asked to-day to give considerable damages, and Sir John Simon has said to you that you will take "a fair and valiant view" of those articles about the bombs. He has said to you that this case will be noticed all over the British Empire, and that the reputation of English justice is more or less at stake.

Gentlemen, it is a most serious case. I do not know that I have ever tried so serious a case, having regard to what may be the consequences of it. That you should give an unfair verdict against the Plaintiff of course is a thing that no one could desire, and no one would hear of that being done without the deepest regret. I have pointed out to you that there is no reason why you should be afraid when you are asked by Sir John Simon to take "a fair and valiant view." What does he mean by "a fair and valiant view"? He means this, does he not, that if you do not do that, why then, some people will think you have not the courage to find a verdict against Mr. Tilak. But, Gentlemen, that is not the point. The point is this. You are just as much bound to be fair to Sir Valentine Chirol, to be fair to the British people and to the administrators here, as to be fair to the Plaintiff who comes before you; and you are not to say: "I will do a brave thing; I will find in favour of the Plaintiff although I do not think he is entitled to a verdict. I will do a thing for him I would not do for an Englishman." It is not enough to say that. You will look at it and not be afraid. You will be valiant only in this sense, that you will do your duty. As was said the other day by Lord Leverhulme: "There are only two classes of people—there are not Lords and Commons, employed and unemployed—there are only two classes of people, those who do their duty and those who do not do their duty," and the people who do not do their duty are those who do something in order to acquire a reputation for valour at the expense of somebody else.

Now, Gentlemen, as I said, this is one of the most serious cases that could be tried. Sir John Simon has said to you in the course of his speech: "You know what is going on around you." He said I should not have

referred to it, but he said: "Only two days ago a young man shot and wounded M. Clemenceau. It is very unfair to say or suggest that he was driven to do that because of what is written in the French newspapers about M. Clemenceau, by people who oppose his policy." You are asked to bring your minds to bear upon M. Clemenceau; you remember the circumstances. There is a very great resemblance between that young man Cottin who shot M. Clemenceau and these wretched people, who were executed in India, quite young. They said that they had read the newspapers. Sir John Simon says as to this young man Cottin, it is not to be supposed that he came to do this through reading the newspapers. Why did he do that? Was he M. Clemenceau's discharged servant? Has it been suggested that he had got any private grudge against M. Clemenceau? What had he been doing? Sir John Simon said he had read the newspapers. You are as much entitled to introduce your knowledge into this case as Sir John Simon is. What had he been reading? Had he been reading at all? Is it or is it not notorious nowadays when there is this atmosphere produced by the reading of certain kinds of productions? Take a matter that has been introduced into this very case. How came some of the murderers to commit those deeds? What did they read? One of them explained that what he had been reading was the life of Mazzini which another of these Indians, a friend of Mr.. Tilak's had translated from English into Mahratti. What led one of these murderers to commit the crime which he did? I think it was Kanhere who said what he had been reading besides the Kesari. He had been reading the life of Mazzini, a book which a friend of Mr. Tilak had translated into Mahratti. What is the "Life of Mazzini"? Who was Mazzini? Mazzini was a conspirator all his life, and a successful one. What is his story? He was a Republican who sought to overthrow the Austrian rule, and one of the consequences of what he has done is that you cannot walk half a mile in any Italian city without coming to "via Mazzini, via Garibaldi, Piazza Garibaldi" or something to do with Cavour, and occasionally a statue of Garibaldi. Those are the things to my mind. Those are the sort of things. He did better things no

doubt, but one of the consequences is that you come across "via Mazzini and via Garibaldi" wherever you go in an Italian city. Who was Mazzini? Mazzini was a conspirator. Mazzini was a Republican, and Mazzini and those associated with him overthrew the Austrian rule. This is the point about it. Mazzini would not have established the Kingdom of Italy at all. Mazzini quarrelled with Garibaldi and quarrelled with Cavour. It was Cavour who founded the Kingdom of Italy, and put the Savoyards on the throne. Mazzini was for a Republic, and he was for adopting many of those methods which, if you want to know more about this kind of thing, you will find in the book of another Italian, Machiavelli, and those people. Those people read we know the life of Machiavelli. They might read it, but what does it prove? Here is the question. Sir Edward Carson says that the reading of this kind of paper induced people to commit murders even if the names are not mentioned. Here is a murderer who says: "I came into this by reading the 'Life of Mazzini.'" Of course, Mazzini was not the murderer of Mr. Jackson. Not at all. The "Life of Mazzini," according to Kanhere, among other things, induced him into that frame of mind which led him to kill Mr. Jackson whom Mazzini certainly never mentioned, and so the argument for the Defendant is, that it is not necessary for these newspapers in the propaganda of Mr. Tilak to mention Mr. Jackson or to mention anybody at all. It is the general effect of his writings, like the "Life of Mazzini." It is, as Sir Valentine Chirol says at page 62, the poisonous doctrines which you can get out of the "Kesari" just as they got poisonous doctrines out of the writings of people who were notorious and advocated very questionable means of carrying out their object.

Now, Gentlemen, I have said to you that this is a question of character, and if the Plaintiff's character has been damaged at all, what should be the reparation the Defendant has to make if he has to make any? Therefore it is right that you should remember who he is, privately and publicly, and that you should remember who he is, what character he bears, and you should consider how much (if he has injured him) the Defendant

can have injured him. This is what was put to Mr. Tilak in cross-examination by Sir Edward Carson on page 101 on the second day: " You had yourself I think, spoken for 26 hours ?—I do not know exactly about that—20 or 26. Q. Was the Judge a native of India ?—Yes, Mr. Justice Davar. Q. Here is what he said : ' Bal Gangadhar Tilak, it is my painful duty now to pass sentence on you. I cannot tell you how painful it is to see you in this position. You are a man of undoubted talents, and of great power and influence.' You agree to that, I suppose ? —Those words were uttered by the Judge. Q. ' Had these talents and that influence been used for the good of your country, you would have been instrumental in bringing about a great deal of happiness for those very people whose cause you espouse. Ten years ago you were convicted. The Court dealt most leniently with you then, and the Crown dealt still more leniently with you ; after you had undergone your imprisonment for a year, six months of it were remitted on conditions which you accepted.' You had accepted conditions ?— Yes. Q. ' The condition which you signed was : I hereby accept '—he does not quote the whole of it. Listen to this, ' It seems to me that it must be a deceased mind, a most perverted mind that can think that the articles that you have written are legitimate articles to write in political agitation. They are seething with sedition ; they preach violence ; they speak of murders with approval.'" What does the Defendant say ? " They preach violence; they speak of murders with approval." Then " Did the Judge say that ?—Yes, the Judge took that view." That is the article read to you. Do you remember the article about the bomb or shall I read it ? Was the Judge right or wrong ? The Judge said that " they preach violence ; they speak of murders with approval. Did the Judge say that ?—Yes, the Judge took that view." Then he goes on " And the cowardly and atrocious act of committing murders with bombs not only seems to meet with your approval, but you hail the advent of the bomb into India as if something had come to India for its good. As I said, it could only be a diseased and perverted mind that could consider that bombs are the legitimate instruments of political agitation, and it would be a diseased min

that could ever have thought that the articles that you had written could be legitimately written. Your hatred of the ruling classes has not disappeared during these ten years, and these articles, deliberately and definitely written week after week, were not written, as you say, on the spur of the moment, but a fortnight after the cruel and cowardly outrages committed on English women, persistently and definitely refer to a bomb as if it was one of the instruments of political warfare. I say such journalism is a curse to the country. Mr. Tilak, was that published all over India?" Now he comes and complains. That is what is said about him by one of his own countrymen, Mr. Justice Davar. Is there a word of it which is not thoroughly justified? As he said to Sir Edward Carson, that was published all over India. Now suppose that Sir Valentine Chirol knew that it was published all over India and all over England, is there anything in it calculated to do him as much harm as that? That is said of him by a man who has been sitting with the responsibility that I have now sitting here—a man of his own race, an Indian thoroughly acquainted with the country who has made a study of his judgments. There it stands uncontradicted. What did he do after that? He served his sentence; he came out of prison, and when he came out he entered into a bond which has been read to you. What was his conduct? It was said he wrote a nice letter, which he put in the "Kesari" after he came out, a really quite complimentary letter on English life. Almost before the ink of that letter was dry what was he doing? Why he had broken the condition of his licence by going——

Mr. SPENCE: There was no licence, my Lord.

Mr. Justice DARLING: Licence or no licence, he proceeded to do this. I have the document.

Sir EDWARD CARSON: It was a prohibition, my Lord.

Mr. Justice DARLING: Yes, a prohibition. He was prohibited from making speeches. Why? Because he set to work—so little good had that Judge done him and so little good had the transportation done him—in spite of the complimentary letter about the British Raj, that he had to be prohibited and he was prohibited from making

any speech because he was going about dissuading the people of India from entering the British army, when we were, as you know, ever since 1914 down to November last, fighting for our lives against the greatest military power that ever existed—the same point with regard to which he had said : "Buy German goods ; buy any goods, but do not buy English goods," the articles of commerce of that same power he would rather have had in India than the goods made in this country and that at a time when we were fighting that power and fighting for our lives and wanted the help of every man in the army and every woman to make cartridges with which to supply them. What was his love for the English Raj ? He had to be prohibited from making speeches at all because he was making, in the circumstances, speeches that were designed to weaken the power of this country by getting the people not to join the army to fight that enemy.

Gentlemen, that is the man who comes to you for damages, a man of whom one of his own countrymen, occupying the position of a Judge, said what I have just read to you ; of whom we know that that which he said was published all over India. His character must be thoroughly well known by men of his own race. That is the man who comes to you to-day. His latest act was such that he had to be prohibited from opening his mouth in India. That is the man who comes before you to-day and says : " The Defendant has written a libel about me. It has damaged my character, and because it has damaged my character I want the Jury to give me a verdict with damages."

Now, Gentlemen, as I have said to you, no one contends that there are no actionable libels in what the Defendant wrote, but the Defendant says : " I have a good defence to them." Has he satisfied you that it is a good defence ? Libels there are, but the Defendant says, " they are true and besides that, here I comment upon what you, Tilak, had written and done. I say it is fair comment and I ask you to say that you come to the same conclusion in every way as I do. I say it is my opinion, and I am entitled to hold it, the facts being what they are, and I say with regard to the Tai Maharaj affair, it is a fair report of the proceedings. "

Now, Gentlemen, I leave the case to you. It there remains. Anything which is proved before you, a word, a sentence, or anything which is proved before you to your satisfaction, that it is a libel, and if the Defence, be it as it may, is not made out, as to the report of official proceedings, or fair comment—if it is not made out, you must give a verdict for the Plaintiff, and if you give a verdict for the Plaintiff, then you will say what are the damages to be awarded to him, because his character has been injured by what the Defendant has written about him.

Now, Gentlemen, I have not left this case to you in a number of little packets, libel No. 1, libel No. 2, and so on, nothing of the kind.

Mr. SPENCE: May I interrupt, my Lord. I understood my learned leader had not invited your Lordship to do so.

Mr. Justice DARLING: I have said invited or not, I am not going to do so, Mr. Spence.

Mr. SPENCE: Your Lordship will understand that I make the application.

Mr. Justice DARLING: And I refuse it. I am not going to cut this up into little snippets and leave it to you in little packets, because, as I have said, it is put in one paragraph, paragraph 3, in the Statement of Claim, as a libellous publication selected from various pages of this book, and it is met by taking the passages, in one case certainly leaving out a passage in the middle of the paragraph—a portion of a sentence. I do not think it is a fair way to look at it to cut this up into little snippets and say "Is there a libel there, or is that fair comment? What are the damages for that? I take it in this way, Gentlemen. The publication of a libel is not only a civil wrong giving a right to damages, but it is a criminal offence for which a man may be indicted. You understand that. You understand that if a libel is actionable without a claim for special damage it is a criminal offence and the subject of indictment. Gentlemen, the special damage is this: If a Plaintiff can point to anything and say "You wrote this libel against me, I have suffered a loss of money," or something of that kind, that is called special damage.

Supposing he says "You wrote this libel against me and since then the circulation of my paper has fallen off in consequence of what you wrote," or supposing he says "Somebody who used to be my friend with whom I was in partnership has left me bacause of what you wrote" that would be special damage, or if he says, "I have lost so much because of what you wrote," that would be special damage. But there is no claim for special damage here. There is no suggestion that the Plaintiff can point to a shilling that he has lost or a paisa worth of damage that has been done to him by what the Defendant has written about him. For all that, every libel unjustified is presumed to have done some damage, because it is a libel. Therefore, if you find there is a libel here, no matter of how few words, which the defence has not proved, then you will find for the Plaintiff, with what damages you think right. But, as I was saying to you, wherever the libel is a libel which is actionable without a claim for special damage, it is also a criminal offence to publish it for which a man may be indicted, and this which is published here is libellous, if libellous at all, without the allegation of special damage. This is a case in which, after the proper preliminaries had been taken the Defendant might have been put upon his trial in a criminal Court, and if he had been put upon his trial in a criminal Court, and all this libel had been set out exactly as it is here in paragraph 3 of the Statement of Claim, he could have pleaded not guilty, and he could have pleaded justification, and then the question would have been put, not cutting this up into half a dozen snippets or packets, "Is the Defendant guilty or not guilty?" As his defence of justification, he would have to plead that it was true, and that it was for the public benefit, and his justification would be, putting it into words, is that plea made out? And the Jury would have to say, "Yes, it is," or "No, it is not." But upon the question whether he published a libel, the Jury would be asked simply: "Is he guilty or not guilty," and upon the question of justification they would be asked simply the question, "With regard to the whole libel which he has justified, has he failed to prove nis justification

with regard to any part of it." So I say to you, for that reason, amongst others, because this libel might be the subject of a criminal charge, and if so, would be dealt with in that way, I have not thought it right to cut it up into little sentences and to ask you to say "Will you consider these six words and those seven words of that paragraph," and so on. I ask you to take it altogether and say does it anywhere contain a libel on the Plaintiff? Is any part of it which is libellous justified? And if you say "Yes," after looking at it all, is there any part of it which is not justified? Then upon one or other of the grounds of justification pleaded, is it true, and thereupon is it a fair and accurate report of the judicial proceedings? Then according as you find it is justified or not justified, so you will return your verdict for the Plaintiff or for the Defendant, remembering that if there is any part of it which is held to be a libel, and held not to be justified, then your verdict will be for the Plaintiff with such damages as you think he deserves; but if you come to the conclusion that all of it which is libellous has been justified without exception, in that case you will return a verdict for the Defendant.

Now, Gentlemen, will you consider your verdict. Of course, you may take with you any of these documents you wish, and if there is anything more upon which you desire my assistance you will tell me upon what point it is, and I shall be most happy to help you.

(The Jury retired at 5-50 and returned into Court at 6-17).

The ASSOCIATE: Gentlemen of the Jury, are you all agreed?

The FOREMAN of the JURY: We are.

The ASSOCIATE: Do you find for the Plaintiff or for the Defendant?

The FOREMAN of the JURY: For the Defendant.

Sir EDWARD CARSON: My Lord. I ask for Judgment with costs.

Mr. Justice DARLING: Yes. Whose is the Special Jury?

Sir EDWARD CARSON: It is their Special Jury, my Lord.

Mr. Justice DARLING: Gentlemen, you understand

that Sir Valentine Chirol is not the only Defendant. If he were guilty, the publishers were equally guilty, as they are also Defendants. I presume your verdict includes them?

The FOREMAN of the JURY: Yes, my Lord.

Mr. Justice DARLING: You find for the Defendants?

The FOREMAN of the JURY: Yes, my Lord.

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